

**STATE BOARD OF EDUCATION
ADMINISTRATIVE CODE
COMMENT/RESPONSE FORM**

This comment and response form contains comments from the October 5, 2016, meeting of the State Board of Education when the draft regulations were considered at Second Discussion Level.

Topic: Fiscal Accountability,
Efficiency and Budgeting Procedures **Meeting Date:** November 2, 2016

Code Citation: N.J.A.C. 6A:23A-16 through 22 **Level:** Proposal

Division: Executive Services **Completed by:** State Board Office

Summary of Comments and Agency Responses:

The following is a summary of the comments received from State Board of Education members and the Department's responses. Each commenter is identified at the end of the comment by a letter that corresponds to the following list:

- A. Mark W. Biedron, President
State Board of Education
- B. Joseph Fisicaro, Vice President
State Board of Education

1. **COMMENT:** The commenter asked for confirmation that the proposed regulations are a straight readoption of the current regulations and, in the near future, the Department will present to the State Board proposed amendments to N.J.A.C. 6A:23A-16 through 22 . (A)

RESPONSE: Yes, the commenter's synopsis is correct.

2. **COMMENT:** The commenters asked for a timeline for the Department's presentation of proposed amendments to N.J.A.C. 6A:23-16 through 22 in terms of which subchapters will be presented first to the State Board. (A, B)

RESPONSE: The proposed amendments to N.J.A.C. 6A:23-16 through 22 will be presented to the State Board in the next few months beginning with N.J.A.C. 6A:23A-18, Tuition for Private Schools for Students with Disabilities.



State of New Jersey

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

Proposal Level
November 2, 2016

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

KIMBERLEY HARRINGTON
Acting Commissioner

TO: Members, State Board of Education

FROM: Kimberley Harrington
Acting Commissioner

SUBJECT: N.J.A.C. 6A:23A, Fiscal Accountability, Efficiency and Budgeting
Procedures, Subchapters 16 through 22

AUTHORITY: N.J.S.A.18A:4-15

REASON
FOR ACTION: Readoption with Amendments

SUNSET DATE: November 25, 2016

Summary

The Department of Education proposes to readopt N.J.A.C. 6A:23A, Fiscal Accountability, Efficiency and Budgeting Procedures, Subchapters 16 through 22 with amendments. N.J.A.C. 6A:23A expires on May 24, 2017.

Subchapters 16 through 22 provide for fiscal accountability, financial accounting and recordkeeping, calculation of tuition for public schools and private schools for students with disabilities (PSSDs), residency determination, and the financial operations of charter schools.

Subchapters 16 through 22 previously were codified at N.J.A.C. 6A:23, Finance and Business Services, until November 18, 2009, when the State Board voted to recodify the chapter as N.J.A.C. 6A:23A-16 through 22. Shortly before the recodification, the Commissioner adopted the first two phases of its fiscal accountability rules as N.J.A.C. 6A:23A-1 through 15. The combination of all 22 subchapters are compiled under one chapter all rules concerning the fiscal operations of school districts, charter schools, and PSSDs.

Subchapters 16 through 22 are proposed for readoption as State Board of Education rules consistent with the original authority that established the rules. The Commissioner is also proposing a rulemaking to readopt Subchapters 1 through 15 pursuant to the original authority that established the subchapters.

The Department proposes amendments throughout N.J.A.C. 6A:23A-16 through 22 to replace references to the "Division of Finance" with "Office of School Facilities and Finance" to

reflect the current title and to replace “Comparative Spending Guide” with “Taxpayers’ Guide to Education Spending” to reflect the change in the guide’s title.

Unless otherwise specified below, all other amendments are for grammatical improvement or to update Administrative Code cross-references.

Subchapter 16. Double-Entry Bookkeeping and GAAP Accounting

This section provides the requirements for school district accounting and financial reporting.

N.J.A.C. 6A:23A-16.1 Prescribed system of double-entry bookkeeping and GAAP accounting

This section requires district boards of education and charter school boards of trustees to maintain a uniform system of financial bookkeeping and reporting consistent with generally accepted accounting principles (GAAP), and the Federal financial accounting terminology and classifications for local and State school systems.

The Department proposes an amendment at N.J.A.C. 6A:23A-16.1(b), which requires each district board of education and charter school board of trustees to ensure the uniform system is consistent with GAAP and compatible with financial accounting terminology and classifications in the Financial Accounting for Local and State School Systems, 2003, to replace “2003” with “2014” to update the edition of the Federal chart of accounts manual. The same amendment is proposed at N.J.A.C. 6A:23A-16.2(f)1.

N.J.A.C. 6A:23A-16.2 Principles and directives for accounting and reporting

This section directs school districts and charter schools to follow accounting and reporting directives prepared, published, and distributed by the Commissioner. The section also establishes criteria for the required system of accounting and reporting objectives and for the annual budget and monthly financial statements and reports. The section further requires each school district and charter school to prepare and publish a Comprehensive Annual Financial Report (CAFR) and to maintain legal reserves.

The Department proposes an amendment at N.J.A.C. 6A:23A-16.2(i)2iii, which requires, in accordance with New Jersey Office of Management and Budget (NJOMB) Circular Letter 98-07, a district board of education or charter school board of trustees to ensure the public school accountant provides the Department a copy of the most recent external peer/quality report within 30 days after the initial engagement of the licensed public school accountant or firm and within 30 days after the issuance of a subsequent peer/quality report, to replace “98-07” with “15-08.” The Department also proposes to add the circular’s title -- “Single Audit Policy for Recipients of Federal Grants, State Grants, and State Aid.” NJOMB no longer publishes outdated circulars on its website; therefore, inclusion of the circular’s title will make it easier to find the relevant circular if it is replaced in the future.

N.J.A.C. 6A:23A-16.3 Conflicts between legal provisions and GAAP

This section requires that the district board of education or charter school board of trustees to provide additional schedules and a narrative in the CAFR when financial statements prepared in accordance with GAAP do not demonstrate legal, State, or Federal compliance.

N.J.A.C. 6A:23A-16.4 Minimum bond requirements for treasurer of school moneys

This section concerns minimum surety bond requirements for the treasurer of school moneys. The section also requires a district board of education and charter school board of trustees to ensure the independent school auditor verifies the adequacy of the treasurer's surety bond and includes appropriate comment and a recommendation, if needed, in the annual school audit report.

N.J.A.C. 6A:23A-16.5 Supplies and equipment

This section establishes criteria to distinguish between supplies and equipment for accounting purposes. The section also requires that a district board of education or charter school board of trustees that elects to purchase food supplies pursuant to the section to adopt a policy that specifies which supplies can be purchased without advertising for bids. The section also requires the district board of education or charter school board of trustees to follow public bidding procedures for supplies that must be advertised.

N.J.A.C. 6A:23A-16.6 Mechanical bookkeeping systems

This section requires that a district board of education or charter school board of trustees that contracts for electronic data processing bookkeeping services to have an annual audit prepared or to obtain and maintain a copy of an audit of the internal controls of the service company or agency as prescribed by Statement of Auditing Standards (SAS) No. 70, as amended by SAS No. 88 of the American Institute of Certified Public Accounts.

The Department proposes to delete "as prescribed by Statement of Auditing Standards (SAS) No. 70, as amended by SAS No. 88 of the American Institute of Certified Public Accounts, incorporated herein by reference." The Department proposes to add as the last sentence: "The audit shall be performed as prescribed by Statement of Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization." SSAE No. 16 contains the new standards for audits of service organizations that process data for district boards of education or charter school boards of trustees.

N.J.A.C. 6A:23A-16.7 Employee organizational dues

This section authorizes deductions made from employee's compensation for the purpose of paying dues to a bona fide employee organization and requires the deductions to be submitted to the employee organization. The section also requires school district or charter school employees who select to have payroll deductions of organizational dues to indicate, in writing, their choice of employee organization, which can be withdrawn at any time.

N.J.A.C. 6A:23A-16.8 Petty cash fund

This section permits the use of a petty cash fund(s) for the purpose of making immediate payments of comparatively small amounts. The section also establishes criteria for establishment of petty cash funds.

N.J.A.C. 6A:23A-16.9 Summer payment plans

This section authorizes district boards of education to establish a summer payment plan to provide for withholding 10 percent of the salary of 10-month employees during the academic year. The section also requires that the district board of education to ensure the amount withheld

earns interest and is available to the employee either at the end of the academic year or in installments prior to September 1.

N.J.A.C. 6A:23A-16.10 Budgetary controls and over-expenditure of funds

This section requires that a district board of education or charter school board of trustees to implement controls over budgeted revenues and appropriations, and requires any school district or charter school projecting a deficit to follow specific reporting procedures, including the creation of a corrective action plan. The section also requires that all district boards of education and charter school boards of trustees follow detailed financial reporting procedures at every meeting, and establishes a timeline for the executive county superintendent to report to the Commissioner any over expenditure by a school district or charter school. The section further authorizes the Commissioner to reduce State payments to any school district or charter school that fails to implement a corrective action plan.

The Department proposes an amendment at N.J.A.C. 6A:23A-16.10(a)4 and (c)3ii, which requires the school business administrator/board secretary to reflect in the minutes the certification or a detailed account of all transfers and their ratification and requires the transfers to be made in accordance with the subchapter and four statutes. The Department proposes to delete the reference to N.J.S.A. 18A:7F-6.c, which was repealed by P.L. 2007, c. 260.

N.J.A.C. 6A:23A-16.11 Internal service funds

This section describes internal service funds, which are used to account for and report any activity that provides goods and services from one department or office to other departments or offices of the district board of education, or to other district boards of education and governmental units, on a cost-reimbursement basis. The section also permits a district board of education providing a shared service within the school district to allocate costs on a user-charge or other basis.

N.J.A.C. 6A:23A-16.12 Student activity funds

This section defines student activity funds derived from athletic events or other activities of pupil organizations, and requires the funds to be maintained in separate interest-bearing accounts. The section also requires the district board of education or charter school board of trustees to establish activity funds by resolution and to adopt a policy that will ensure appropriate fiscal accountability.

N.J.A.C. 6A:23A-16.13 School store business practices

This section requires a district board of education or any organization under its auspices to comply with sales tax rules established by the New Jersey Division of Taxation when operating a school store or offering goods for sale.

N.J.A.C. 6A:23A-16.14 Dismissal or re-assignment of a school business administrator

This section requires notice to the executive county superintendent regarding transfer or dismissal of the school business administrator.

N.J.A.C. 6A:23A-16.15 Appeals

This section provides that Commissioner decisions issued pursuant to this chapter can be appealed to the Appellate Division of the Superior Court. Decisions of the assistant commissioner and executive county superintendent issued pursuant to this chapter can be appealed pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

Subchapter 17. Tuition Public Schools

N.J.A.C. 6A:23A-17.1 Method of determining tuition rates for regular public schools

This section defines the actual cost per student for the calculation of the maximum tuition rate a receiving school district is permitted to charge parents and sending school districts, which is certified annually by the Department. The section requires the district board of education to apportion expenditures by program category and provides examples of the accounting for various expenditure items. The section further requires the receiving and sending district boards of education to establish, in their contractual agreement, a tentative tuition rate, and sets forth how the estimated cost per student must be determined. The section also permits certain district boards of education to change the method of determining their tuition rates, with Commissioner approval.

The Department proposes to amend N.J.A.C. 6A:23A-17.1(b), which defines “actual cost per student” for determining tuition rates, to replace “P.L. 2007, c. 260” with the statutory reference “N.J.S.A. 18A:7F-54.”

The Department proposes to delete N.J.A.C. 6A:23A-17.1(b)3, which requires a receiving district board of education to phase-out, beginning in the 2008-2009 school year, the reduction in the “actual cost per pupil” by the amount of Abbott Parity Remedy Aid, Educational Opportunity Aid, and Discretionary Educational Opportunity Aid. The rule also requires the receiving district to reduce, as appropriate, the “actual cost per student” for all grade and program categories by the total amount of the referenced aid categories received in the 2007-2008 school year according to the specified timeline. The regulation further requires the receiving district board of education to make no reduction to the “actual cost per pupil” for this purpose for the 2012-2013 school year and thereafter. The years for reduction of tuition by the amount of State aid to former Abbott school districts has passed; therefore, the regulation is obsolete.

The Department also proposes to delete N.J.A.C. 6A:23A-17.1(e)8, which requires the actual and prorated expenditures for all grade/program categories adjusted to determine the “actual cost per pupil” according to a specified protocol for school years 2008-2009 through 2011-2012, for the same reason discussed above regarding paragraph (b)3.

The Department proposes to recodify N.J.A.C. 6A:23A-17.1(e)9 as new (e)8.

N.J.A.C. 6A:23A-17.2 Method of determining tuition rate in a new district board of education

This section applies to establishing tuition rates in school districts in their first year of operation. It requires new district boards of education to submit tuition rates based on budgeted costs for Commissioner approval and requires sending districts to pay the approved estimated tuition rates. The section further requires the sending or receiving school district to pay for any over- or under-estimate of the tuition rate once the actual certified rate is determined.

N.J.A.C. 6A:23A-17.3 County vocational-technical school districts funding; public school district tuition payments; post-secondary vocational-technical education fund sources

This section permits county vocational school districts (CVSD) to charge tuition to sending school districts within the county and to charge an additional fee to sending school districts from outside the county. The section further permits CVSDs to receive revenue for post-secondary vocational programs provided to post-secondary students who reside within or outside the county.

The Department proposes an amendment to the section heading to remove “-technical” from “[c]ounty vocational-technical school districts” to use terminology consistent with N.J.A.C. 6A:23A-1.2 and N.J.S.A. 18A:54, which authorizes the establishment of county vocational schools and school districts. The same amendment is proposed in the heading of N.J.A.C. 6A:23A-17.4.

The Department also proposes to delete “-technical” from references to “county vocational-technical school district” or to replace “county vocational-technical school district” with “CVSD” in N.J.A.C. 6A:23A-17.3 and 17.4.

N.J.A.C. 6A:23A-17.4 Method of determining tuition rates for county vocational-technical schools

This section defines the method of determining the actual cost per student for determining the tuition rate for a CVSD. The section limits the CVSD tuition rate to the maximum (actual) cost for regular or special education programs, less other revenues received by the CVSD, such as State aid, pension and Social Security payments from the State, prior year tuition adjustments, and county contributions. The section requires the CVSD to establish sending district boards of education contractual agreements that include a tentative tuition rate. The section further requires a tuition adjustment to account for the difference between the estimated cost and the actual cost in the subsequent year.

N.J.A.C. 6A:23A-17.5 County special services school districts funding; budget limitations; tuition payments

This section permits the boards of education of county special services school districts (CSSSDs) to receive tuition for students sent by other district boards of education and prevents the CSSSDs from receiving State aid. The section requires the CSSSD boards of education to calculate tuition rates for individual special education programs and permits the CSSSD to charge a fee to sending school districts outside the county. The section further specifies tuition to the CSSSD will be transferred directly from the Department and the sending school district’s State aid will be reduced accordingly.

The Department proposes to delete the first sentence of N.J.A.C. 6A:23A-17.5(a), which states the section will be effective with the calculation of certified rates beginning with fiscal year 2010-2011, since the year has passed.

N.J.A.C. 6A:23A-17.6 Calculation of maximum general fund budget net of county contribution and maximum average tuition rate

This section defines items the CSSSD must include in its general fund budget for the determination of the tuition rate. The section also limits the tuition charges to the maximum average tuition rate per pupil (maximum tuition revenues divided by average daily enrollment).

N.J.A.C. 6A:23A-17.7 Method of determining tuition rates for county special services schools

This section defines the method of determining the actual cost per student for determining a CSSSD's tuition rate. The section requires the CSSSD to exclude from the actual cost calculation certain revenues, including costs for programs funded by other sources (county contributions, Medicaid reimbursements, etc.) and expenditures not associated with specific programs for the sending school districts. The section further requires the CSSSD to allocate funds by program category, according to workpapers provided by the Commissioner. Like previous sections for other school districts, this section requires the CSSSD to establish tentative tuition rates by contractual agreements with sending district boards of education and to ultimately adjust payments according to the CSSSD's actual costs.

Subchapter 18. Tuition for Private Schools for Students with Disabilities

The rules in this subchapter provide the methodology for calculation of tuition charged by PSSDs. The rules also establish non-allowable costs and audit requirements.

N.J.A.C. 6A:23A-18.1 Definitions

The section defines terms used in the subchapter.

N.J.A.C. 6A:23A-18.2 Tuition rate procedures

This section provides the methodology for calculation of tuition rates charged by PSSDs. The Department sets a tentative payment rate for PSSDs based on audited costs of the preceding school fiscal year and then adjusts the rate based on a reconciliation of the allowable spending of each PSSD. Tuition is based on actual allowable costs plus a percentage profit (for-profit PSSDs) or percentage increase in working capital (nonprofit PSSDs). The Department notifies PSSDs and school districts of a maximum tentative tuition rate for the ensuing school year. Further, this section allows PSSDs to charge one tuition rate per school location or separate tuition rates by class type and by school location. If the PSSD charges a rate by class type, it is required to maintain bookkeeping and accounting records by class type and school location.

N.J.A.C. 6A:23A-18.3 New approved private schools for students with disabilities

This section provides the framework for establishing a new PSSD. Prospective applicants must file, with the Office of Special Education Programs, an application to establish a PSSD, complete and file appropriate documentation, and obtain Commissioner approval prior to operating as a PSSD. Additionally, this section establishes requirements for the minimum number of public school placement students for new schools and previously approved PSSDs.

N.J.A.C. 6A:23A-18.4 Bookkeeping and accounting

This section establishes requirements for accounting and financial reporting by PSSDs. The section also specifies recordkeeping and requires PSSDs to prepare quarterly financial reports in a format prescribed by the Commissioner and submit the reports to the PSSD governing body for acceptance. The section also establishes criteria for when PSSDs may provide merit- or contingent-pay increases. This section sets rules on how PSSDs account for the costs of retirement plans or the timing of compensation increases.

N.J.A.C. 6A:23A-18.5 Non-allowable costs

This section provides a lengthy, yet non-exhaustive, list of 68 types of non-allowable costs that PSSDs are not permitted to include in the calculation of the certified actual cost per student that may reduce, in certain instances, the final tuition rate the PSSD is permitted to charge New Jersey school districts and State agencies.

N.J.A.C. 6A:23A-18.6 Surcharge

This section allows “for-profit” PSSDs to charge a tuition rate than includes an annual surcharge up to 2.5 percent of the PSSD’s allowable actual costs.

N.J.A.C. 6A:23A-18.7 Public school placement restricted working capital fund

This section allows “nonprofit” PSSDs to establish a working capital fund and requires the balance to not exceed 2.5 percent of the school's actual allowable costs.

N.J.A.C. 6A:23A-18.8 Calculation of student attendance

This section prescribes student attendance recordkeeping.

N.J.A.C. 6A:23A-18.9 Audit requirements

This section sets forth requirements for audits of annual financial statements by independent registered municipal accountants of New Jersey or an independent certified public accountant of New Jersey. The section also provides rules related to the audited tuition rate versus the tentative tuition rate.

N.J.A.C. 6A:23A-18.10 Appeals

This section provides that decisions of the assistant commissioner of the Division of Administration and Finance regarding the calculation or approval of tentative tuition rates and conditional approval status made pursuant to the subchapter can be appealed in accordance with N.J.A.C. 6A:3. This section also provides that Commissioner decisions regarding new PSSDs may be appealed to the State Board of Education.

N.J.A.C. 6A:23A-18.11 Out-of-State approved private schools for students with disabilities

This section sets forth procedures for agreement of tuition rates when a student is sent to an out-of-State PSSD or to a facility approved by the New Jersey Department of Human Services.

N.J.A.C. 6A:23A-18.12 Inspection of records

This section requires financial and accounting records of an approved PSSD or records maintained by the PSSD, or by a related party for records that pertain to a transaction between the related party and the PSSD, to be available for review and audit by the Commissioner or his or her representative(s). The section also requires all auditor workpapers used in the preparation of the year-end audited financial statements to be available for review by the Commissioner or his or her representative(s).

N.J.A.C. 6A:23A-18.13 Fiscal monitoring of approved private schools for students with disabilities and corrective action plans

This section provides for fiscal monitoring and corrective action plans when noncompliance has been determined.

N.J.A.C. 6A:23A-18.14 Fiscal information

This section requires PSSDs to submit, to the Department, specified annual fiscal information. This section also requires an affidavit by the PSSD's owners/operators that they are aware of the non-allowable costs in N.J.A.C. 6A:23A-18.5 and the costs charged as allowable costs in the PSSD tuition rate are consistent with the individualized education program of a student with disabilities and are reasonable, that is, ordinary and necessary and not in excess of the cost that would be incurred by an ordinary prudent person in the administration of public funds. The section also requires the Department to publish annually a PSSD spending guide. The section further requires an approved PSSD to have available upon the Department's request a copy of the board of director's minutes or, for a partnership, the minutes of the partners meetings.

N.J.A.C. 6A:23A-18.15 Failure to comply with the Department directives

This section allows the Department to place a PSSD on conditional approval status if the school fails to comply with Department directives, such as failure to refund tuition as a result of a Department audit.

N.J.A.C. 6A:23A-18.16 Sale of assets of an approved private school for students with disabilities

This section requires an approved PSSD that sells its assets to a new or existing approved PSSD to provide the Department with a copy of the sale agreement, the allocation of purchase price, and a financial report within 90 days of the sale showing asset disposition and any corresponding refund to the sending districts based on the sale of assets.

Subchapter 19. Emergency State Aid and Residency Determination

N.J.A.C. 6A:23A-19.1 Emergency aid

This section outlines the procedures a school district must follow when applying for emergency aid from the State.

N.J.A.C. 6A:23A-19.2 Method of determining the district of residence

This section establishes the criteria for determining the district of residence for financial responsibility for students who are placed in State facilities or placed by State agencies.

The Department proposes an amendment at N.J.A.C. 6A:23A-19.2(b), which requires the "present district of residence" or "district of residence" to be determined by the Commissioner based upon the address submitted by the Department of Corrections, the Department of Human Services, or the Juvenile Justice Commission, to replace "Department of Human Services" with "Department of Children and Families" to reflect the change in the responsibility of the respective agencies. The Department of Children and Families is now responsible for submitting requests for district of residence determinations.

N.J.A.C. 6A:23A-19.3 Address submission for determining the district of residence

This section establishes how financial responsibility for a student's education is assigned based on the address of the child's parent(s) or guardian(s), the address of the resource family home parents, or the State.

The Department proposes an amendment at N.J.A.C. 6A:23A-19.3(a)7, which requires the district of residence determination to be based on the present address of any child who is age 18 or older, or has been legally emancipated and has lived on his or her own before the initial placement in a State facility or by a State agency. The Department proposes two grammatical amendments to clarify that there are two criterion for this rule: one that requires the student to be at least 18 years of age or legally emancipated and one that requires the student to be living on his or her own prior to the initial placement.

Subchapter 20. Purchase and Loan of Textbooks

N.J.A.C. 6A:23A-20.1 Eligibility

This section requires a district board of education in which a nonpublic school is located to purchase and to loan, without charge, textbooks to students who are State residents and attend nonpublic schools situated in the school district.

N.J.A.C. 6A:23A-20.2 Responsibility of the district board of education

This section requires the school district to distribute textbooks on an equitable basis and without discrimination to both public and nonpublic students, pursuant to N.J.S.A. 18A:58-37.1 et seq.

N.J.A.C. 6A:23A-20.3 Individual requests

This section describes the process by which a nonpublic school requests textbooks from the school district. The section also states the requests are due on or before March 1 preceding the school year.

N.J.A.C. 6A:23A-20.4 Ownership and storage of textbooks

This section requires a school district to maintain the ownership of textbooks and the responsibility for their receipt and inventory. The section also permits the district board of education to require the return of the textbooks at the end of the school year or to enter into an agreement with a nonpublic school to store the books.

N.J.A.C. 6A:23A-20.5 Accounting entries

This section permits the district board of education to include the cost of freight or postage with expenditures for the purchase of textbooks on school district financial statements. The section also requires the district board of education to enter the cost of textbooks for public school students in the general expense fund and the cost of textbooks for nonpublic students in the special revenue fund in the minimum charter of accounts.

N.J.A.C. 6A:23A-20.6 Charge for textbook loss or damage

This section allows each district board of education to make reasonable rules and regulations governing the loan of textbooks to both public and nonpublic school students. The section allows the district board of education's rules and regulations to require student

reimbursement to the district board of education for damage, loss, or destruction of the loaned textbooks.

Subchapter 21. Management of Public School Contracts

N.J.A.C. 6A:23A-21.1 Change orders and open-end contracts

This section sets forth procedures for use of change orders.

N.J.A.C. 6A:23A-21.2 Acceptance of bonds under the Public School Contracts Law

This section provides requirements related to performance, bid, and/or labor and material bonds.

N.J.A.C. 6A:23A-21.3 Public sale of bonds

This section sets forth procedures related to public sale of bonds.

The Department proposes to amend N.J.A.C. 6A:23A-21.3(b), which allows a district board of education to conduct the public sale of bonds through the submission of electronic bids or proposals and in accordance with Department of Community Affairs rules at N.J.A.C. 5:32-9 and 10 to correct the references to two subchapters of the Department of Community Affairs. The proposed amendment updates the cross-reference to the Department of Community Affairs rules to N.J.A.C. 5:30-2.9 and 2.10.

6A:23A-21.4 Contracts for behind-the-wheel driver education

This section establishes procedures regarding award of contracts for behind-the-wheel driver education.

N.J.A.C. 6A:23A-21.5 Joint purchasing systems

This section allows a district board of education or charter school board of trustees to establish by resolution joint purchasing systems pursuant to N.J.S.A. 40A:11-11 and upon approval of the Director of the Division of Local Government Services in the Department of Community Affairs.

N.J.A.C. 6A:23A-21.6 Multi-year leasing

This section requires a district board of education or charter school board of trustees to execute multi-year leases only as authorized by the Public School Contracts Law and in accordance with rules promulgated by the Department of Community Affairs at N.J.A.C. 5:34-3.

The Department proposes an amendment to add a reference to N.J.S.A. 18A:20-4.2(f) to account for amendments to the Public School Contracts Law under P.L. 2010, c. 44 that concern the budgetary requirements associated with entry into a multi-lease purchase agreement.

Subchapter 22. Financial Operations of Charter Schools

N.J.A.C. 6A:23A-22.1 Definitions

This section establishes that the words and terms used in the subchapter are defined in N.J.A.C. 6A:23A-15.1.

N.J.A.C. 6A:23A-22.2 Bookkeeping and accounting for charter schools

This section requires charter schools to comply with GAAP and other requirements and provisions in N.J.A.C. 6A:23A-16.

N.J.A.C. 6A:23A-22.3 Certification

This section requires charter schools to employ or contract with a person who holds a New Jersey standard or provisional school business administrator certificate to oversee the charter school's fiscal operations.

N.J.A.C. 6A:23A-22.4 Financial requirements

This section limits the amount of time a charter school can incur debt, permits the charter school board of trustees to lease property for use as a school facility, and requires the charter school be granted a charter by the Commissioner before it can receive any payments from a district board of education. The section also requires the charter school's share of per pupil expenditures for classroom instruction to be comparable to the average share of classroom instruction expenditures for other public schools in the State. The section also requires charter school boards of trustees to include in their bylaws provisions for the distribution of assets upon insolvency or non-renewal of the charter school charter.

N.J.A.C. 6A:23A-22.5 Public school contract law

This section requires charter schools to comply with the Public School Contracts Law.

N.J.A.C. 6A:23A-22.6 Public relations and professional services; board policies; efficiency

This section requires each charter school board of trustees to establish, by policy(ies), a strategy(ies) to minimize the cost of public relations, as defined in N.J.A.C. 6A:23A-9.3(c)14, and professional services.

N.J.A.C. 6A:23A-22.7 Charter school response to Office of Fiscal Accountability and Compliance (OFAC) investigation report

This section requires a charter school that has been subject to an audit or investigation by the Department's Office of Fiscal Accountability and Compliance (OFAC) to discuss the findings of the audit or investigation at a public meeting of the charter school board of trustees no later than 30 days after receipt of the findings.

N.J.A.C. 6A:23A-22.8 Verification of payroll check distribution

This section requires all charter schools to verify payroll at least once every three years.

The Department proposes an amendment at N.J.A.C. 6A:23A-22.8(a), which requires charter schools to require employees to produce picture identification for the release of the employee's paycheck, to delete "[b]eginning with the 2009-2010 school year" because the time period has passed. The Department also proposes to replace "district" with "charter school" in

the last sentence since the section concerns charter schools rather than districts. The same amendment is proposed at N.J.A.C. 6A:23A-22.9(d)1 and 22.10(a)2 and 6.

N.J.A.C. 6A:23A-22.9 Board of trustees expenditures for non-employee activities, meals and refreshments

This section provides the allowable and prohibited expenditures for non-employee activities, meals, and refreshments.

The Department proposes an amendment at N.J.A.C. 6A:23A-22.9(d), which details costs that are not permitted using public funding pursuant to N.J.S.A. 18A:11-12 and NJOMB Circular 08-19-OMB and 06-14-OMB, to update the references to the OMB circulars with "16-11-OMB, Travel Regulations, and 11-09-OMB, Entertainment, Meals, and Refreshments." The proposed amendment will ensure charter schools are using the current OMB regulations for each area.

N.J.A.C. 6A:23A-22.10 Nepotism policy

This section requires charter school boards of trustees to implement a nepotism policy that prohibits certain administrators from hiring or supervising a relative. The section also prohibits certain charter school administrators from negotiating or voting on any contract when their relative is a member of the affected collective bargaining unit.

N.J.A.C. 6A:23A-22.11 Contributions to board members and contract awards

This section requires charter schools to establish policies and procedures to ensure the maintenance of honest and ethical relations with vendors and to guard against favoritism.

The Department proposes an amendment at N.J.A.C. 6A:23A-22.11(a), which requires charter school boards of trustees to adopt and implement the policies detailed in the subsection by January 20, 2010, to delete the sentence requiring the policies to be adopted and implemented by January 20, 2010, because the date has passed.

The Department proposes to delete N.J.A.C. 6A:23A-22.11(a)6, which exempts contributions made to charter school boards of trustees prior to December 21, 2009, from the limitations established in the subsection, since the date has passed.

N.J.A.C. 6A:23A-22.12 Internal controls

This section requires charter schools to establish specific policies and procedures on internal controls to promote operational efficiency and effectiveness, provide reliable financial information, and safeguard assets and records.

N.J.A.C. 6A:23A-22.13 Segregation of duties; organization structure

This section requires charter schools to segregate duties of all financial processes among business office staff based on available charter school resources, assessed vulnerability, and the associated cost-benefit.

N.J.A.C. 6A:23A-22.14 Standard operating procedures (SOPs) for business functions

This section requires charter schools to establish standard operating procedures (SOPs) for each task or function of the charter school's business operations.

The Department proposes an amendment at N.J.A.C. 6A:23A-22.14(a), which requires by July 1, 2010, each charter school to establish standard operating procedures for each task or function of the charter school's business operation, to remove "[b]y July 1, 2010" since the date has passed.

N.J.A.C. 6A:23A-22.15 Approval of amounts paid in excess of approved purchase orders; board policy

This section requires charter schools to adopt a policy establishing the approval process for a remittance of payment for invoice amounts greater than the approved purchase order. The section includes specific programming requirements for the charter schools' financial systems. The section also requires the school business administrator to review, on a monthly basis, all change reports made in excess of the originally approved purchase order amount.

As the Department has provided a 60-day comment period on this notice of proposal, the notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments govern essential activities that support the educational process and enhance fiscal accountability. The rules proposed for readoption with amendments will continue to protect the public interest by ensuring that educational support activities will be conducted both in accordance with law and in a manner that benefits students and the general public. More than \$9 billion in public tax dollars is provided to district boards of education and charter schools boards of trustees Statewide to implement educational programs. The rules proposed for readoption with amendments are essential to promote sound administrative practices and provide for the proper expenditure of funds. The rules proposed for readoption with amendments also continue to ensure district boards of education, charter school boards of trustees, PSSDs, and the public have access to necessary information to make informed policy decisions.

Economic Impact

The rules proposed for readoption with amendments will have a positive impact on public schools, charter schools, and PSSDs through the rules' promotion of the proper expenditure of public funds by providing an orderly and efficient method for conducting essential education support activities.

In the past, the rules have provided an orderly and efficient method for the conduct of essential fiscal operations and other administrative support activities of district boards of education, charter school boards of trustees, and PSSDs. The rules proposed for readoption with amendments will continue this process and create an overall positive economic impact in terms of the degree of protection and accountability the rules provide for the proper expenditure of public funds. The rules proposed for readoption with amendments will not require the employment of additional personnel, and will not impose a negative economic impact on the State, school districts, charter schools, or PSSDs.

Federal Standards Statement

There are no Federal standards or requirements applicable to the rules proposed for readoption with amendment; therefore, a Federal standards analysis is not required.

Jobs Impact Statement

The Department anticipates the rules proposed for readoption with amendments will have no impact upon the generation or loss of jobs in the State. The rules proposed for readoption with amendments concern the fiscal operations of district boards of education, charter school boards of trustees, and PSSDs.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact upon the agriculture industry in the State. The rules proposed for readoption with amendments concern the fiscal operations of district boards of education, charter school boards of trustees, and PSSDs.

Regulatory Flexibility Analysis

PSSDs meet the definition of a small business as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

With the exception of N.J.A.C. 6A:23A-18, which specifically addresses PSSDs, the rules proposed for readoption with amendments PSSDs impact solely upon district boards of education, charter school and renaissance school board of trustees, and other entities regulated by the New Jersey Department of Education.

There are approximately 159 approved PSSDs in New Jersey. The rules proposed for readoption do not impose any additional reporting, recordkeeping, or compliance requirements. As in prior years, approved PSSDs are required to maintain financial records on an accrual basis of accounting and in accordance with Department issued chart of accounts. Those records include, but are not limited to: (1) a cash receipts journal; (2) a cash disbursements journal; (3) a general ledger; (4) a tuition ledger; (5) a payroll journal; and (6) a fixed assets inventory. As in previous years, the rules proposed for readoption allow, with exception at the discretion of management, that the private schools charge one per diem tuition rate for the entire school year, which reduces the reporting and recording requirements. The private schools are required to file a year-end audit report, which must be prepared by a licensed public school accountant. The costs of such services may be included in the tuition rate charged to a district board of education, and, therefore, will not impose a financial burden on the regulated private schools. There are no additional capital costs associated with the rules proposed for readoption. Thus, as compliance costs are minimal, and may be included with the tuition rate charged to district boards of education, there should be no adverse economic impact on small businesses.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood the rules proposed for readoption with amendments would evoke a change in the average costs associated with housing. The rules pertain to the fiscal operations of school districts, charter schools, and PSSDs.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood the rules proposed for readoption with amendments would evoke a change in housing production in Planning Areas 1 or 2, or within

designated centers, under the State Development and Redevelopment Plan. The rules pertain to the fiscal operations of school districts, charter schools, and PSSDs.

Full text of the proposed readoption with amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

**CHAPTER 23A,
FISCAL ACCOUNTABILITY, EFFICIENCY AND BUDGETING PROCEDURES**

SUBCHAPTER 16. DOUBLE-ENTRY BOOKKEEPING AND GAAP ACCOUNTING

- 6A:23A-16.1 Prescribed system of double-entry bookkeeping and GAAP accounting
- 6A:23A-16.2 Principles and directives for accounting and reporting
- 6A:23A-16.3 Conflicts between legal provisions and GAAP
- 6A:23A-16.4 Minimum bond requirements for treasurer of school moneys
- 6A:23A-16.5 Supplies and equipment
- 6A:23A-16.6 Mechanical bookkeeping systems
- 6A:23A-16.7 Employee organizational dues
- 6A:23A-16.8 Petty cash fund
- 6A:23A-16.9 Summer payment plan
- 6A:23A-16.10 Budgetary controls and overexpenditure of funds
- 6A:23A-16.11 Internal service funds
- 6A:23A-16.12 Student activity funds
- 6A:23A-16.13 School store business practices
- 6A:23A-16.14 Dismissal or re[-]assignment of a school business administrator
- 6A:23A-16.15 Appeals

SUBCHAPTER 17. TUITION PUBLIC SCHOOLS

- 6A:23A-17.1 Method of determining tuition rates for regular public schools
- 6A:23A-17.2 Method of determining tuition rate in a new district board of education
- 6A:23A-17.3 County vocational[-technical] school districts funding; public school district tuition payments, post-secondary vocational-technical education fund sources
- 6A:23A-17.4 Method of determining tuition rates for county vocational[-technical] schools
- 6A:23A-17.5 County special services school districts funding; budget limitations; tuition payments
- 6A:23A-17.6 Calculation of maximum general fund budget net of county contribution and maximum average tuition rate
- 6A:23A-17.7 Method of determining tuition rates for county special services schools

**SUBCHAPTER 18. TUITION FOR PRIVATE SCHOOLS FOR STUDENTS WITH
DISABILITIES**

- 6A:23A-18.1 Definitions

6A:23A-18.2 Tuition rate procedures
6A:23A-18.3 New approved private schools for students with disabilities
6A:23A-18.4 Bookkeeping and accounting
6A:23A-18.5 Non-allowable costs
6A:23A-18.6 Surcharge
6A:23A-18.7 Public school placement restricted working capital fund
6A:23A-18.8 Calculation of student attendance
6A:23A-18.9 Audit requirements
6A:23A-18.10 Appeals
6A:23A-18.11 Out-of-State approved private schools for students with disabilities
6A:23A-18.12 Inspection of records
6A:23A-18.13 Fiscal monitoring of approved private schools for students with disabilities and
corrective action plans
6A:23A-18.14 Fiscal information
6A:23A-18.15 Failure to comply with Department directives
6A:23A-18.16 Sale of assets of an approved private school for students with disabilities

SUBCHAPTER 19. EMERGENCY STATE AID AND RESIDENCY DETERMINATION

6A:23A-19.1 Emergency aid
6A:23A-19.2 Method of determining the district of residence
6A:23A-19.3 Address submission for determining the district of residence

SUBCHAPTER 20. PURCHASE AND LOAN OF TEXTBOOKS

6A:23A-20.1 Eligibility
6A:23A-20.2 Responsibility of the district board of education
6A:23A-20.3 Individual requests
6A:23A-20.4 Ownership and storage of textbooks
6A:23A-20.5 Accounting entries
6A:23A-20.6 Charge for textbook loss or damage

SUBCHAPTER 21. MANAGEMENT OF PUBLIC SCHOOL CONTRACTS

6A:23A-21.1 Change orders and open-end contracts
6A:23A-21.2 Acceptance of bonds under the Public School Contracts Law
6A:23A-21.3 Public sale of bonds
6A:23A-21.4 Contracts for behind-the-wheel driver education

6A:23A-21.5 Joint purchasing systems

6A:23A-21.6 Multi-year leasing

SUBCHAPTER 22. FINANCIAL OPERATIONS OF CHARTER SCHOOLS

6A:23A-22.1 Definitions

6A:23A-22.2 Bookkeeping and accounting for charter schools

6A:23A-22.3 Certification

6A:23A-22.4 Financial requirements

6A:23A-22.5 Public school contract law

6A:23A-22.6 Public relations and professional services; board policies; efficiency

6A:23A-22.7 Charter school response to Office of Fiscal Accountability and Compliance
(OFAC) investigation report]

6A:23A-22.8 Verification of payroll check distribution

6A:23A-22.9 Board of trustees expenditures for non-employee activities, meals and refreshments

6A:23A-22.10 Nepotism policy

6A:23A-22.11 Contributions to board members and contract awards

6A:23A-22.12 Internal controls

6A:23A-22.13 Segregation of duties; organization structure

6A:23A-22.14 Standard operating procedures (SOPs) for business functions

6A:23A-22.15 Approval of amounts paid in excess of approved purchase orders; board policy

**SUBCHAPTER 16. [DOUBLE ENTRY] DOUBLE-ENTRY BOOKKEEPING AND GAAP
ACCOUNTING**

6A:23A-16.1 Prescribed system of double-entry bookkeeping and GAAP accounting

- (a) Each district board of education and charter school board of trustees shall maintain a uniform system of financial bookkeeping and reporting.
- (b) Each district board of education and charter school board of trustees shall ensure that the uniform system is fully consistent with the "generally accepted accounting principles" (henceforth referred to as "GAAP") as set forth in the Governmental Accounting and Financial Reporting Standards Original Pronouncements, published annually by the Governmental Accounting Standards Board (GASB; 401 Merritt 7, [P.O.] **PO** Box 5116, Norwalk CT), incorporated herein by reference, as amended and supplemented, and is compatible with the financial accounting terminology and classifications established in the Federal accounting manual, Financial Accounting for Local and State School Systems, [2003] **2014** Edition, by the National Center for Education Statistics (NCES; K Street NW, Washington, DC 20006), incorporated herein by reference, as amended and supplemented, as prepared, published, and distributed by the Commissioner, as required by N.J.S.A. 18A:4-14.

6A:23A-16.2 Principles and directives for accounting and reporting

- (a) Each district board of education and charter school board of trustees shall use accounting and reporting directives as prepared, published, and distributed by the Commissioner in addition to any books, materials, or bulletins, for the guidance of school officials in

establishing and maintaining the double-entry bookkeeping and accounting system mandated in this subchapter.

- (b) Each district board of education and charter school board of trustees shall develop a system of accounting and reporting objectives that makes it possible to:
 - 1. Present fairly and with full disclosure the funds and activities of the district board of education and charter school board of trustees in conformity with GAAP; and
 - 2. Determine and demonstrate compliance with finance-related legal and contractual provisions.
- (c) Each district board of education and charter school board of trustees shall develop an accounting system that is organized and operated on a fund basis and shall:
 - 1. Report governmental, proprietary, and fiduciary funds in the fund financial statements to the extent that they have activities that meet the criteria for using those funds;
 - 2. Establish and maintain those funds required by law and sound financial administration. Only the minimum number of funds consistent with legal and operating requirements should be established;
 - 3. Use the modified accrual or accrual basis of accounting as appropriate in measuring financial position and operating results in accordance with GAAP and regulatory provisions; and
 - 4. Recognize transfers in the accounting period in which the interfund receivable and payable arise.
- (d) Each district board of education and charter school board of trustees shall adopt an annual budget and shall include the adopted annual budget in the minutes of the board.
 - 1. A district board of education or charter school board of trustees shall develop a detailed budget statement, which includes the classification of expenditures by program and function and is prepared on a fund basis in accordance with N.J.S.A.

18A:22-8[,] **and** on a form prescribed by the Commissioner.

2. A district board of education or charter school board of trustees shall prepare **a** detailed budget[s] for each special project, each capital project as separately identified in [the] **a** referendum, and each Federal or State grant and maintain [them] **the detailed budget**, along with all authorized revisions, on file in the district board of education or charter school board of trustees' business office.
 3. Each district board of education and charter school board of trustees shall take appropriate action, as necessary, to maintain a balanced budget.
- (e) Each district board of education and charter school board of trustees shall ensure [that] the accounting system provides the basis for appropriate budgetary control.
- (f) Each district board of education and charter school board of trustees shall use [a] common terminology and classification consistently throughout the budget, [the] accounts, and [the] financial reports of each fund, and shall adopt a chart of accounts prepared in conformity with the following:
1. Each district board of education and charter school board of trustees shall use, for financial reporting to the Department of Education, a uniform minimum chart of accounts published and distributed by the Commissioner consistent with Financial Accounting for Local and State School Systems, [2003] **2014** Edition, developed by the National Center for Education Statistics (NCES); K Street NW, Washington DC 20006), incorporated herein by reference, as amended and supplemented.
 2. A district board of education or charter school board of trustees wishing to expand upon the minimum requirements for the budget system established in (f)1 above shall compile budget data in the expanded and minimum format each month and at the end of the fiscal year, and shall use for such expanded systems the Financial Accounting for Local and State School Systems, developed by [the National

Center for Education Statistics] **NCES**, as published and distributed by the Commissioner.

3. A district board of education and charter school board of trustees shall approve and adopt any modifications to the chart of accounts, and shall ensure conformance of the modifications to the standards established in (f)1 and 2 above.
- (g) Each district board of education and charter school board of trustees shall establish an adequate internal control structure and procedures for financial reporting.
 - (h) Each district board of education and charter school board of trustees shall prepare monthly financial statements and reports of financial condition, operating results, and other pertinent information, in accordance with directions issued by the Commissioner, to facilitate management control of financial operations, legislative oversight, and, where necessary or desired, for external reporting purposes.
 - (i) Each district board of education and charter school board of trustees shall prepare and publish a Comprehensive Annual Financial Report (henceforth referred to as CAFR) in compliance with the standards set forth by the Government Accounting and Financial Reporting Standards Original Pronouncements, incorporated herein by reference, as amended and supplemented, as prepared, published, and distributed by the Governmental Accounting Standards Board (GASB 401 Merritt 7, [P.O.] **PO** Box 5116, Norwalk CT 06856-5116) and GAAP, covering all activities of the district board of education [and] **or** charter school board of trustees. The district board of education and charter school board of trustees shall ensure that the CAFR includes, but is not limited to: an introductory section; basic financial statements; required supplementary information; schedules, narrative explanations, and a statistical section. Each district board of education and charter school board of trustees shall use the uniform program as published and distributed by the Commissioner for preparing the Comprehensive Annual Financial Report.

1. A district board of education or charter school board of trustees shall cause an audit of the annual financial statements to be made pursuant to N.J.S.A. 18A:23-1 et seq., and shall engage only a licensed public school accountant to conduct the annual audit who has an external peer/quality report performed in accordance with Government Auditing Standards (Yellow Book) by the Comptroller General of the United States (U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001). The district board of education or charter school board of trustees shall ensure [that] the external peer/quality report is completed within the time established by Government Auditing Standards issued by the Comptroller General of the United States unless the accountant or firm can show good cause as to why there is a delay.
2. A district board of education or charter school board of trustees shall require the submission of the most recent external peer/quality report and letter of comment to the district board of education or charter school board of trustees for review and evaluation prior to each appointment of a licensed public school accountant to conduct the annual audit.
 - i. A district board of education or charter school board of trustees shall acknowledge the receipt, review, and evaluation of the external peer/quality report in the public session and [board] minutes in which the district board of education or charter school board of trustees authorizes the engagement of the accountant or firm to perform the audit.
 - ii. A district board of education or charter school board of trustees shall require the submission of an updated external peer/quality report of the licensed public school accountant engaged by the district board of education, within 30 days after the issuance date of the external peer/quality report if such report is issued prior to the date of the audit

opinion for the most recent fiscal year.

- iii. In accordance with NJOMB Circular Letter [98-07] **15-08, Single Audit Policy for Recipients of Federal Grants, State Grants and State Aid**, including any amendments or revisions thereto, a district board of education or charter school board of trustees shall ensure that the public school accountant provides a copy of the most recent external peer/quality report to the Department, within 30 days after the initial engagement of a licensed public school accountant or firm and within 30 days after the issuance of a subsequent peer/quality report.
3. A district board of education or charter school board of trustees shall engage a public school accountant during the audit engagement period for non-auditing, management, or other consulting services only if the services comply with the [independent] **independence** standards as established in Government Auditing Standards (Yellow Book) by the Comptroller General of the United States.
4. A district board of education or charter school board of trustees may be prohibited for good cause by the Commissioner from engaging a particular licensed public school accountant, or may be directed by the Commissioner on a process to be used in the appointment of a licensed public school accountant. For the purpose of this provision, good cause **shall** include[s] documented violations of N.J.S.A. 18A:23-1 et seq., reported deficiencies or violations identified through the American Institute of Certified Public Accountants (AICPAs) Peer Review Process as applied by the New Jersey Society of Certified Public Accountants (NJSCPA), disciplinary action by the State Board of Accountancy or AICPA, or after an investigation by the Department and hearing before the Commissioner or his or her designee.
5. Documented violations of N.J.S.A. 18A:23-1 et seq. will be reported to the State

Board of Accountancy with a recommendation by the Commissioner to cancel the license of the licensed public school accountant. A district board of education or charter school board of trustees is prohibited from employing any accountant subject to this provision until the State Board of Accountancy makes a determination on the cancellation of the license.

- (j) Each district board of education shall, pursuant to N.J.S.A. 18A:4-14, maintain legal reserves as defined at N.J.A.C. 6A:23A-1.2 and published by the Governmental Accounting Standards Board (GASB; 401 Merritt 7, [P.O.] **PO** Box 5116, Norwalk, CT) for encumbrances, or [state] **State** or other government-imposed or permitted legal restrictions. A district board of education may request approval to establish a legal reserve other than those authorized herein by submitting a written request to the [Division] **Office of School Facilities and Finance** in accordance with the annual audit program.

6A:23A-16.3 Conflicts between legal provisions and GAAP

- (a) [Where] **If** financial statements prepared in conformity with GAAP do not demonstrate finance-related legal and Federal or State contractual compliance, a district board of education or charter school board of trustees shall present such additional schedules and narrative explanations in the Comprehensive Annual Financial Report as may be necessary to report its legal compliance responsibilities and accountabilities.
- (b) Each district board of education and charter school board of trustees shall maintain the accounting system on a legal-compliance basis, and shall include sufficient additional records to permit GAAP-based reporting.

6A:23A-16.4 Minimum bond requirements for treasurer of school moneys

- (a) Each district board of education and charter school board of trustees shall use as the minimum requirements for the surety bond for the treasurer of school moneys, such percentage of the current year's school budget as [is] required in the schedule set forth below:

Total School Budget	Minimum Bond Required
Up to \$100,000.00	20 percent of budget (Minimum \$10,000)
\$100,000.01 to \$250,000.00	\$20,000 plus 15 percent of all over \$100,000
\$250,000.01 to \$500,000.00	\$42,500 plus 13 percent of all over \$250,000
\$500,000.01 to \$750,000.00 - \$500,000	\$75,000 plus eight percent of all over \$500,000
\$750,000.01 to \$1,000,000.00 \$750,000	\$95,000 plus four percent of all over \$750,000
\$1,000,000.01 to \$2,000,000.00 \$1,000,000	\$105,000 plus two percent of all over \$1,000,000
\$2,000,000.01 to \$5,000,000.00 \$2,000,000	\$125,000 plus one percent of all over \$2,000,000
\$5,000,000.01 to \$10,000,000.00 \$5,000,000	\$155,000 plus 1/2 percent of all over \$5,000,000
\$10,000,000.01 and upwards	\$180,000 plus 1/4 percent of all over \$10,000,000

- (b) A district board of education or charter school board of trustees, in fixing such minimum bond, shall round to the nearest \$1,000.
- (c) A district board of education and charter school board of trustees shall ensure that the independent school auditor verifies the adequacy of the treasurer's surety bond, which is required by N.J.S.A. 18A:17-32, and includes appropriate comment[,] and a recommendation, if needed, in the annual school audit report.

6A:23A-16.5 Supplies and equipment

- (a) Criteria to distinguish between supplies and equipment for accounting purposes as prescribed by GAAP pursuant to N.J.A.C. 6A:23A-16.1 and contained in the Financial Accounting for Local and State School Systems, which is established by the National Center for Education Statistics (**NCES**), and further specified in the New Jersey Department of Education's Uniform Minimum Chart of Accounts for New Jersey Public Schools, is incorporated by reference herein, as amended and supplemented, and on file and may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, PO Box 049, Trenton, New Jersey and the Department of Education, PO Box 500, Trenton, New Jersey.
- (b) For the purpose of this section, "food supplies" includes only those supplies that are to be eaten or drunk and those substances that may enter into the composition of a food in the operation of a school cafeteria or in a home economics class.
- (c) Whenever any district board of education or charter school board of trustees elects to purchase food supplies pursuant to this section, it shall adopt a policy stating what food supplies will be purchased without advertising for bids, pursuant to N.J.S.A. 18A:18A-5, designating a person or persons authorized to purchase food supplies, describing the procedure by which interested vendors may become eligible to submit quotations, and outlining the method by which the district board of education or charter school board of trustees will solicit and accept quotations. A district board of education or charter school board of trustees shall adopt this policy before the opening of school[s] each year, and shall make the policy known to the public.
- (d) A district board of education or charter school board of trustees shall provide definite and uniform specifications governing standards of quality to each eligible vendor from whom

quotations are solicited.

1. Each time a purchase of food supplies is to be made, the person(s) designated by the district board of education or charter school board of trustees to purchase food supplies shall solicit quotations from interested, eligible vendors in the manner prescribed in the adopted district board of education or charter school board of trustees' policy. Quotations for fresh or frozen fruits, vegetables, and meats need not be solicited more than once in any two-week period.
 2. The person(s) designated to purchase the food supplies shall purchase them from the vendor giving the lowest quotation, unless the person(s) designated by the district board of education or charter school board of trustees to purchase food supplies can justify the purchase from one of the other vendors submitting a quotation. The person(s) designated shall retain such justification, together with all quotations received, in permanent record form, **which shall be** available to school officials, the district board of education or charter school board of trustees, and the Department of Education for review and for audit for a minimum of three years.
 3. Contingent upon approval of the district board of education or charter school board of trustees in its adopted policy, the person(s) designated by the district board of education or charter school board of trustees to purchase food supplies may purchase food supplies for any school cafeteria or home economics class to the extent of not more than \$500.00 in any month without soliciting quotations, provided a statement signed by the purchaser is filed with the invoice indicating the reason why quotations could not be obtained, and shall retain such record for review and for audit.
- (e) Paragraphs (d)1 and 2 above [do] **shall** not apply to food supplies purchased by advertising for bids.

6A:23A-16.6 Mechanical bookkeeping systems

A district board of education or charter school board of trustees [which] **that** contracts for electronic data processing bookkeeping services shall annually have an audit prepared, or obtain a copy of an audit of the internal controls of the service company or agency [as prescribed by Statement of Auditing Standards (SAS) No. 70, as amended by SAS No. 88 of the American Institute of Certified Public Accountants, incorporated herein by reference,] and maintain a copy of such audit on file. **The audit shall be performed as prescribed by Statement of Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization.**

6A:23A-16.7 Employee organizational dues

- (a) Pursuant to provisions of N.J.S.A. 52:14-[15.9(e)]**15.9e**, any person holding employment with a district board of education or charter school board of trustees in this State may have deductions made from this compensation for the purpose of paying dues to a bona fide employee organization.
- (b) A district board of education or charter school board of trustees shall require that employees desiring payroll deductions of organizational dues indicate, in writing, their choice of employee organization. Any such written authorization may be withdrawn at any time by filing a notice with the secretary of the district board of education or charter school board of trustees.
- (c) Any secretary of a district board of education or employee of a charter school board of trustees responsible for making organizational payroll deductions shall submit to the designated employee organization[,] all deductions made for such purposes.

6A:23A-16.8 Petty cash fund

- (a) Pursuant to the provisions of N.J.S.A. 18A:19-13, a district board of education or charter school board of trustees may establish on July 1 of each year, or as needed, a petty cash fund or funds for the purpose of making immediate payments of comparatively small amounts.
- (b) A district board of education or charter school board of trustees establishing a petty cash fund shall:
 - 1. Indicate the amount or amounts authorized for each fund;
 - 2. Set the maximum expenditure that may be made from each fund;
 - 3. Designate an employee who shall be responsible for the proper disposition of each fund;
 - 4. Establish the minimum time period in which the designated person shall report to the district board of education or charter school board of trustees on amounts disbursed from each fund; and
 - 5. Approve a voucher prepared by the school business administrator/board secretary to replenish each fund.
- (c) Each person designated [per] **pursuant to** (b)3 above shall ensure that all unused petty cash funds are returned to the depository at the close of each fiscal year.

6A:23A-16.9 Summer payment plan

A district board of education, in accordance with N.J.S.A. 18A:29-3, shall establish a [Summer Payment Plan which will] **summer payment plan** to provide for withholding 10 percent of the salary of 10-month employees during the academic year. The district board of education shall

ensure that the amount withheld earns interest and is available to the employee either at the end of the academic year or in installments prior to September 1.

6A:23A-16.10 Budgetary controls and overexpenditure of funds

- (a) A district board of education or charter school board of trustees shall implement controls over budgeted revenues and appropriations as follows:
1. A district board of education or charter school board of trustees shall only approve an encumbrance or expenditure (liability or payment) that, when added to the total of existing encumbrances and expenditures, does not exceed the amount appropriated by the district board of education or charter school board of trustees in the applicable line item account established pursuant to the minimum chart of accounts referenced in N.J.A.C. [6A:23-2.2(g)1] **6A:23A-16.2(f)1**.
 2. A district board of education or charter school board of trustees shall [only] approve the recording of revenues **only** when measurable and available, in accordance with GAAP, unless otherwise authorized pursuant to N.J.S.A. 18A:22-[44.2(a)]**44.2.a**. State aid and tax levy approved in the budget certified for taxes shall be recorded in full as of July 1. State restricted and unrestricted grants shall be recorded in full upon signing and execution of the grant agreement or as otherwise directed by the grantor.
 3. When a district board of education or charter school board of trustees adopts an expanded chart of accounts pursuant to N.J.A.C. [6A:23-2.2(g)2] **6A:23A-16.2(f)2**, such district board of education or charter school board of trustees shall adopt a policy concerning the controls over appropriations for line item accounts that exceed the minimum level of detail established pursuant to N.J.A.C. 6A:[23-2.2(g)1]**23A-16.2(f)1**. If a district board of education or charter school board of

trustees fails to adopt such a policy, such school district **or charter school** shall apply the restrictions [contained] in (a)1 above to line item accounts that exceed the minimum level of detail.

4. A district board of education or charter school board of trustees, unless otherwise restricted by law or Commissioner directive, may transfer amounts from line item accounts with available appropriation balances to permit the approval of encumbrances or expenditures otherwise prohibited in (a)1 and 3 above. A district board of education or charter school board of trustees shall make these transfers prior to the approval of [such] encumbrances or expenditures. A district board of education or charter school board of trustees shall make all transfers in accordance with N.J.S.A. 18A:22-8.1, 18A:22-8.2, [18A:7F-6.c,] and 18A:7G-31, and N.J.A.C. [6A:23-2.11, 2.13 and 2.14] **6A:23A-13.14**.
- (b) A district board of education or charter school board of trustees incurring or projecting a year-end deficit on a budget basis in the general fund, capital projects fund, or debt service fund, or for a restricted project in the special revenue fund as designated in N.J.A.C. 6A:23A-16.2(c) shall proceed in the following manner:
 1. The district board of education or charter school board of trustees shall direct the chief school administrator, or charter school lead person, to notify the executive county superintendent of schools within two working days[,] of the following:
 - i. The projected amount of the overexpenditure/deficit; and
 - ii. The preliminary findings of the conditions that caused the projected or actual overexpenditure/deficit.
 2. The district board of education or charter school board of trustees shall develop, and adopt at a public meeting, an acceptable corrective action plan to eliminate the projected/actual fund deficit within 30 days of the discovery of such fund deficit, but in no circumstance more than 30 days after completion of the CAFR

for that year. The corrective action plan shall include:

- i. The projected or actual amount of the fund deficit;
 - ii. A detailed list of the line items and the actual or projected deficit amount comprising the overall fund deficit;
 - iii. The conditions producing the deficit; and
 - iv. The corrective actions taken or to be taken to correct or prevent the deficit and dates or projected dates of such actions.
3. The executive county superintendent shall immediately notify the Commissioner, in writing, of a school district or charter school with an actual or projected fund deficit and the amount of said deficit.
 4. The office of the executive county superintendent shall immediately investigate to determine if the corrective action being taken by the district board of education or charter school board of trustees is sufficient to avoid a fund deficit or correct an actual fund deficit. If necessary, the office of the executive county superintendent shall assist the district board of education or charter school board of trustees in determining what further corrective action can be taken, or request assistance from the [Division] **Office of School Facilities and Finance**.
 5. The executive county superintendent shall immediately notify the Commissioner, in writing, should it appear that a fund deficit has occurred or may occur and the district board of education or charter school board of trustees is not taking adequate action to avoid the overexpenditure/deficit.
- (c) Each district board of education or charter school board of trustees shall ensure the following occurs at every regular district board of education or charter school board of trustees meeting:
1. The school business administrator/board secretary shall present to the district board of education or charter school board of trustees a report showing all

transfers between line item accounts, as well as appropriations, adjustments to appropriations, encumbrances, and expenditures for each line item account shown on the budget form prepared in accordance with N.J.S.A. 18A:22-8. This report [is] **shall be** in addition to the report required by N.J.S.A. 18A:17-9.

2. The school business administrator/board secretary shall report to the district board of education or charter school board of trustees any change(s) in anticipated revenue amounts and revenue sources.
3. A district board of education or charter school board of trustees shall obtain a certification from the school business administrator/board secretary each month that the total of encumbrances and expenditures for each line item account do not exceed the line item appropriation in violation of (a) above.
 - i. If a violation has occurred, the district board of education or charter school board of trustees shall, by resolution, approve by a two-thirds affirmative vote of the authorized membership of the board, pursuant to N.J.S.A. 18A:22-8.1, to either transfer amounts among line items if no department approvals are required pursuant to N.J.A.C. 6A:23A-13, or **to** direct the school business administrator/board secretary, or the chief school administrator or charter school lead person, as appropriate, to request approval pursuant to N.J.A.C. 6A:23A-13 to transfer amounts among line items and/or from undesignated fund balance or other unbudgeted or underbudgeted revenue to eliminate the line item account deficit(s). If the latter option is selected, the appropriate official shall provide a detailed report of approvals granted and the subsequent amounts transferred into and out of the affected line item account(s), undesignated fund balance, or other unbudgeted or underbudgeted revenue account for the board's ratification at the next regularly scheduled meeting.

- ii. As applicable, the school business administrator/board secretary shall reflect in the minutes of the board, the certification or a detailed account of all transfers and the board's ratification, when this option is selected. The district board of education or charter school board of trustees shall make such transfers in accordance with this subchapter and N.J.S.A. 18A:22-8.1, 18A:22-8.2, [18A:7F-6.c] and 18A:7G-31.
- 4. A district board of education or charter school board of trustees, after review of the school business administrator/board secretary's and treasurer's monthly financial reports and upon consultation with the appropriate school district or charter school officials, shall certify in the minutes of the board each month that no fund has been overexpended in violation of (b) above, and that sufficient funds are available to meet the district board of education's or charter school board of trustee's financial obligations for the remainder of the fiscal year.
 - i. If the district board of education or charter school board of trustees is unable to make such a certification, the board shall direct the chief school administrator or charter school lead person to initiate the steps outlined in (b) above and shall reflect such directive in the minutes of the board.
 - ii. If the district board of education or charter school board of trustees is able to make such certification, but one or more members of the board votes no to the certification, the district board of education or charter school board of trustees shall provide to the executive county superintendent, the board vote, names(s) of **the** member(s) [that] **who** voted no, and the reason for the no vote.
 - iii. Within 60 days of [month-end] **the month's end**, or later upon approval of the executive county superintendent, district boards of education subject to N.J.S.A. 18A:7F-6.b, district boards of education that satisfy less than

80 percent of indicators in the fiscal management section of the district performance review located in the Appendix to N.J.A.C. 6A:30, and other district boards of education or charter school boards of trustees at the Commissioner's discretion shall provide **to the executive county superintendent** a copy of the school business administrator/board secretary's and treasurer's monthly financial reports submitted to the district board of education or charter school board of trustees under (c)1 above and as required pursuant to N.J.S.A. 18A:17-9 and 18A:17-36 [to the executive county superintendent].

- iv. Within 60 days of the December month-end, or later upon approval of the executive county superintendent, every district board of education shall provide **to the executive county superintendent** a copy of the school business administrator/board secretary's and treasurer's monthly financial reports submitted to the board of education under (c)1 above and as required pursuant to N.J.S.A. 18A:17-9 and 18A:17-36 [to the executive county superintendent].
- v. Within 60 days of the September, December, and March month end, every charter school board of trustees shall provide a copy of the monthly financial reports submitted to the board of trustees under (c)1 above and as required pursuant to N.J.S.A. 18A:17-9 and 18A:17-36 to the executive county superintendent.
- vi. Any school business administrator/board secretary [that] **who** is more than two months behind in submitting the report **required** pursuant to N.J.S.A. 18A:17-9 to a district board of education or charter school board of trustees shall immediately report this noncompliance to the executive county superintendent.

- (d) The executive county superintendent shall report to the Commissioner by August 15, or for charter schools, 45 days after end of year, all fund overexpenditures, as shown on the June report of the school business administrator/board secretary filed pursuant to N.J.S.A. 18A:17-10.
1. A district board of education or charter school board of trustees shall immediately develop and adopt an acceptable remedial plan to address any fund(s) deficits consistent with the provisions of (b) above.
 2. If necessary, the executive county superintendent shall assist the district board of education or charter school board of trustees in determining what further action can be taken, or request assistance from the [Division] **Office of School Facilities and Finance**.
 3. The executive county superintendent shall immediately notify the Commissioner, in writing, [should] **if** it appears [that] the district board of education or charter school board of trustees is not taking adequate action to remediate the fund(s) deficit.
- (e) A district board of education or charter school board of trustees that fails to develop a corrective action plan or fails to take adequate action in order to avoid or remediate an overexpenditure or fund deficit may be subject to the following:
1. Comprehensive review pursuant to N.J.A.C. 6A:30-3, improvement activities pursuant to N.J.A.C. 6A:30-5, or intervention activities pursuant to N.J.A.C. 6A:30-6, as deemed warranted by the Commissioner.
 2. Beginning in the second year following the year in which the projected overexpenditure or fund deficit occurred, a reduction in a district board of education or charter school board of trustees cash payment of State aid by the percentage of the sum of the deficits or projected deficit in any fund to its adequacy budget calculated pursuant to the provisions of N.J.S.A. 18A:7F-51, or,

in the case of a charter school, a reduction in the charter school aid. Reductions shall be made in the following descending order:

- i. Equalization aid;
- ii. Adjustment aid;
- iii. Transportation aid;
- iv. Security categorical aid;
- v. Special education categorical aid;
- vi. Extraordinary special education cost aid; and
- vii. Preschool education aid.

3. A district board of education or charter school board of trustees shall apply deficits incurred for State and Federal grant projects, enterprise funds such as the school lunch fund, trust and agency funds, and student activity funds, to the balance or deficit of the general fund when such overexpended projects and funds should have been balanced by expenditures from or transfers to that fund.

- (f) In those cases where the Commissioner determines that the failure to develop a corrective action plan or take adequate action in order to avoid or address an overexpenditure or fund deficit impacts upon the school district's ability to meet its goals and objectives, the Commissioner may recommend to the State Board of Education that action be taken pursuant to (b) above as deemed warranted by the Commissioner, or in the case of a charter school that its charter be revoked, pursuant to N.J.S.A. 18A:36A-17.

6A:23A-16.11 Internal service funds

- (a) Internal service funds are used to account for and report any activity that provides goods and services from one department or office to other departments or offices of the district board of education, or to other district boards of education and governmental units, on a

cost-reimbursement basis. Internal service funds are cost accounting and distribution entities and are intended to recover their costs annually or over a reasonable time period.

(b) A district board of education or charter school board of trustees providing a shared service under a shared service agreement with another board of education or external entity shall account for the shared service costs in an internal service fund in accordance with GAAP.

1. The district board of education or charter school board of trustees providing the shared service shall allocate the costs on a [user charge] **user-charge** basis to all participating entities on an annual basis at a minimum.

i. A district board of education or charter school board of trustees that is receiving the services shall report user charges in the applicable line item account for the goods or services received.

ii. A district board of education or charter school board of trustees shall report as revenues the sales and purchases of goods and services for a price approximating their external exchange value ("Services Provided to Other Funds") in provider/seller funds.

2. The district board of education or charter school board of trustees shall ensure that the shared service agreement includes an [agreed upon] **agreed-upon** mechanism for the use and/or distribution of any unexpended balance(s).

3. The district board of education or charter school board of trustees shall evaluate annually any unexpended balance(s) to determine the amount of monies, if any, due back to the shared service entities.

(c) A district board of education providing a shared service within the district may allocate costs on a user charge or other basis.

6A:23A-16.12 Student activity funds

- (a) Student activity funds are used to account for funds derived from athletic events or other activities of pupil organizations and to account for the accumulation of money to pay for student group activities. A district board of education or charter school board of trustees shall establish student activity funds by resolution. Such funds [are] **shall be** maintained under the jurisdiction of the board of education or charter school board of trustees and supervision of the school business administrator/board secretary, who may appoint a designee for purposes of administering the funds.
- (b) Each district board of education and charter school board of trustees shall maintain student activity funds in an interest-bearing account separate from all other funds of the district board of education or charter school board of trustees. The district board of education or charter school board of trustees shall disburse interest on this account(s) to each student activity fund in proportion to the balances on deposit for each activity.
- (c) Each district board of education and charter school board of trustees shall ensure, through adoption of a formal board policy, that all financial and bookkeeping controls are adequate to ensure appropriate fiscal accountability and sound business practices. The district board of education or charter school board of trustees shall include in its policy the following minimum requirements:
1. Receipts are detailed showing date, sources, purpose, and amount. The district board of education or charter school board of trustees shall promptly deposit all receipts in the bank. The district board of education or charter school board of trustees shall ensure that all deposits agree with the entries in the cash receipt book and are traceable to the actual receipts or groups of receipts.
 2. Disbursements [are] **shall be** recorded chronologically showing date, vendor, check number, purpose, and amount. The district board of education or charter school board of trustees shall make all disbursements by check bearing a

minimum of two authorized signatures, and shall support all disbursements by a claim, bill, or written order to persons supervising the fund.

3. Book balances [are] **shall be** reconciled with bank balances. The district board of education or charter school board of trustees shall retain canceled checks and bank statements for examination by the licensed public school accountant as part of the annual audit required under N.J.S.A. 18A:23-1 et seq. and stated in N.J.A.C. 6A:23A-16.2(i).
 4. Student activity funds [are] **shall be** classified by school.
 5. Borrowing from the student activity accounts [is] **shall be** prohibited.
- (d) The district board of education or charter school board of trustees shall not be responsible for the protection of and the accounting for funds collected by any teacher or pupil for an outside organization, and shall not approve such funds for deposit in a school activity account.

6A:23A-16.13 School store business practices

A district board of education, or any organization under its auspices, shall comply with sales tax rules established by the New Jersey **Department of the Treasury's** Division of Taxation when operating a school store or offering goods for sale.

6A:23A-16.14 Dismissal or [re-assignment] reassignment of a school business administrator

- (a) In order to protect the integrity of the school business administrator office, a district board of education shall submit to the executive county superintendent a written justification for the non-renewal, dismissal for cause, [re-assignment] **reassignment**, or elimination of the position of a school business administrator, or the individual duly

certified and performing the duties of a school business administrator, within 48 hours of said notification by the district board of education to the affected employee.

- (b) The affected employee may request a meeting with the executive county superintendent to discuss the justification submitted by the district board of education. The executive county superintendent shall initiate any follow-up action as warranted on issues under the **Department's** jurisdiction [of the Department].

6A:23A-16.15 Appeals

- (a) Decisions of the Commissioner issued pursuant to this chapter may be appealed to the Appellate Division of the Superior Court.
- (b) Decisions of the Assistant Commissioner and executive county superintendent issued pursuant to this chapter may be appealed pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

SUBCHAPTER 17. TUITION PUBLIC SCHOOLS

6A:23A-17.1 Method of determining tuition rates for regular public schools

- (a) For the purposes of this subchapter, a district board of education does not include an educational services commission or jointure commission.
- (b) The term "actual cost per student" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:38-19 and 18A:46-21 means the local cost per student in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined and consistent with the grade/program categories in N.J.S.A. 18A:7F-50 and 18A:7F-55, that is, regular education classes:

preschool and kindergarten, grades one through five, grades six through eight, and grades nine through 12; and special class programs as defined in N.J.A.C. 6A:14-4.7. Districts that receive preschool education aid shall determine [only] an actual cost per student **only** for kindergarten **students**. Pursuant to N.J.A.C. 6A:13A-2.1, districts that receive preschool education aid and charge tuition to another district and/or parent or guardian, as permitted under N.J.A.C. 6A:13A, may charge any amount, not to exceed the per pupil amount established pursuant to [P.L. 2007, c. 260] **N.J.S.A. 18A:7F-54**.

1. The receiving district board of education shall include in its calculation all expenditures for each purpose except Federal and State special revenue fund expenditures and those specifically excluded in (e)5 below.
2. "Average daily enrollment," for the purpose of determining the "actual cost per student," means the sum of the days present and absent of all students enrolled in the register or registers of the program for which the rate is being determined during the year divided by the number of days school was actually in session, but in no event shall the divisor be less than 180 days.
- [3. Beginning in the 2008-09 school year, a receiving district board of education shall phase-out the reduction of the "actual cost per pupil" by the amount of Abbott Parity Remedy Aid, Educational Opportunity Aid and Discretionary Educational Opportunity Aid pursuant to section 61 of P.L. 2007, c. 260. The receiving district shall reduce as appropriate the "actual cost per student" for all grade and program categories by the total amount of the above aid categories received in the 2007-08 school year as follows: .80 in the 2008-09 school year, .60 in the 2009-10 school year, .40 in the 2010-11 school year, and .20 in the 2011-12 school year. For the 2012-2013 school year and thereafter, no reduction shall be made to the "actual cost per pupil" for this purpose. The receiving district board of education shall make such reductions in accordance with the option selected in (c)

below for certification of the "actual cost per student" for each tuition category.]

- (c) The receiving district board of education shall obtain certification of its "actual cost per student" for each tuition category for a given year from the Commissioner based upon either:
1. A report prepared and submitted annually by the receiving district board of education indicating the actual amounts of expenditures and adjustments, whenever practicable, or amounts equitably allocated and supported by documentation for each applicable item in the grade/program category for which the tuition rate is required, according to the prescribed bookkeeping and accounting system; or
 2. A report prepared annually by the Commissioner for each receiving district board of education. This report establishes the "actual cost per student" for each tuition category using the following:
 - i. Expenditures reflected in the receiving district board of education's annual independent audit;
 - ii. Supplemental data for average daily enrollment and items of expenditure detailed in (e)2 below submitted by category by the receiving district board of education on a form prescribed by the Commissioner; and
 - iii. Criteria contained in (e) below.
- (d) Once having determined to annually submit the report pursuant to (c)1 above to the Commissioner, a receiving district board of education shall submit a written request to the Commissioner for review and approval in order to change to the certification method in (c)2 above. The receiving district board of education shall indicate reason(s) for the change.
- (e) The receiving district board of education shall determine the share of each item of expenditure for each grade/program category on the report in (c)1 above on a pro rata or

actual basis as follows:

1. The actual expenditures for each category as reflected in the receiving district board of education's annual independent audit for the following items:
 - i. Teachers' salaries and equipment for regular education classes; and
 - ii. Direct instructional expenditures for salaries, equipment, and other expenses for special education classes.
2. Expenditures submitted by category on the supplemental data report and determined on either an actual basis or an equitable basis of allocation, such as square footage or average daily enrollment selected by the receiving district board of education and supported by documentation for the following items:
 - i. Rental of land and buildings;
 - ii. Interest on [lease purchase] **lease-purchase** agreements;
 - iii. School-sponsored co-curricular activities, athletics, and other instructional programs of the general fund;
 - iv. Local vocational programs;
 - v. Facilities acquisition and construction services included in the budget approved by the executive county superintendent and certified for taxes;
 - vi. Building use charges as defined in (e)6 and 7 below;
 - vii. Other support services, special education students;
 - viii. Related services; and
 - ix. Benefits for special programs.
3. Unallocated expenditures for general education class categories as reflected in the receiving district board of education's annual independent audit and allocated in proportion to the average daily enrollment in the grade categories for general education classes for the following items:
 - i. Other salaries for instruction such as teaching assistants and aides, as well

- as others providing or assisting directly in the instructional program;
 - ii. Textbooks;
 - iii. Equipment;
 - iv. Teaching supplies;
 - v. Purchased professional educational services;
 - vi. Purchased technical educational services;
 - vii. Other support services, regular students;
 - viii. Other direct expenses of general education classes;
 - ix. Direct instructional expenditures for salaries, other expenses, and equipment for basic skills remedial programs; and
 - x. Employee benefits.
4. Expenditures, including related employee benefits and equipment, as reflected in the receiving district board of education's annual independent audit and allocated in proportion to the average daily enrollment in each category for all categories listed in (b) above for the following items:
- i. General administration, central services, administrative information technology, and business and other support services;
 - ii. Improvement of instructional services;
 - iii. Staff training services;
 - iv. Educational media services, school library;
 - v. School administration;
 - vi. Attendance, social work, and health;
 - vii. Contracted transportation or transportation provided by district board of education owned vehicles for curricular activities such as field trips, athletic trips, and other trips [which] **that** are part of the instructional program;

- viii. Operation and maintenance of plant expenditures;
 - ix. Fixed charges, including unallocated employee benefit costs for retirement and [social security] **Social Security** contributions except Teacher's Pension and Annuity Fund (TPAF) contributions, insurance and judgments, including unemployment compensation (UCC), interest on current loans, and other fixed charges except rental of land and buildings and interest on lease-purchase agreements [which are] determined pursuant to (e)2 above, and principal on [lease purchase] **lease-purchase** agreements and tuition [which] **that** are excluded pursuant to (e)5 below;
 - x. Food service expenditures of the general fund; and
 - xi. Direct instructional expenditures for salaries, equipment, and other expenses for bilingual education programs and home instruction.
5. Expenditures that are excluded from the actual cost per student for tuition purposes for the following items:
- i. Transportation to and from school [which] **that** is paid by the resident district board of education;
 - ii. Employee retirement and social security contributions for TPAF members [which] **that** are fully funded by the State;
 - iii. Principal on [lease purchase] **lease-purchase** agreements;
 - iv. Tuition;
 - v. Community services;
 - vi. Resource rooms, which are determined pursuant to (e)9 below and permitted as a separate charge over and above tuition for general education classes;
 - vii. Accredited adult education programs and nonaccredited adult and evening programs; and

- viii. Extraordinary services provided to special education students for which a district board of education may bill directly.
6. Building use charge determined as follows:
- i. Divide the amount of debt service [state] **State** support received by the debt service paid for the school year to determine the ratio of State support;
 - ii. Multiply the debt service interest charges paid on debt for the buildings in which the program is located by the ratio of State support obtained in (e)6i above;
 - iii. Subtract the amount obtained in (e)6ii above from the debt service interest charge paid on debt for the buildings in which the program is located; and
 - iv. Distribute the amount obtained in (e)6iii above in accordance with (e)2 above.
7. Special building use charge determined as follows:
- i. Whenever a receiving district board of education receives more than 50 percent of the average daily enrollment in a program for which a tuition rate is being determined, the receiving district board of education may include, in accordance with (e)2 above, the amount expended for principal and interest on major repairs and major renewals of furniture, equipment, and apparatus for the building in which the program is located, provided [that]:
 - (1) Such major repairs or major renewals were funded by the issuance of bonds as provided in N.J.S.A. 18A:21-1;
 - (2) The receiving district board of education consulted with each sending district board of education having more than 10 percent of the average daily enrollment in the program for which the tuition

rate is being determined prior to taking any action in accordance with N.J.S.A. 18A:24-10 to authorize the issuance of [such] bonds; and

- (3) The majority of district boards of education with more than 10 percent of the enrollment in the program [have] passed a resolution in support of the receiving district board of education's determination to issue such bonds or the Commissioner, after a conference, [has] approved the proposal for the issuance of such bonds.

- ii. A receiving district board of education for which this section is applicable may include, in accordance with (e)2 above, the entire rental on a site or school building acquired by a [lease purchase] **lease-purchase** agreement, pursuant to N.J.S.A. 18A:20-4.2, provided [that]:

- (1) The receiving district board of education consulted with each sending district board of education having more than 10 percent of the average daily enrollment in the program for which the tuition rate is being determined prior to entering into the [lease purchase] **lease-purchase** agreement; and

- (2) Each sending district board of education with more than 10 percent of the enrollment in the program [has] passed a resolution in support of the receiving district board of education's determination to enter into a [lease purchase] **lease-purchase** agreement or the Commissioner, after a conference, [has] approved the proposal to enter into a lease-purchase agreement.

- iii. A receiving district board of education for which this section is applicable may include, in accordance with (e)2 above, a facilities acquisition and

construction service charge, which is determined by the straight line amortization over three years of that part of the total expenditure for facilities acquisition and construction services [which] **that** is over and above the amount stated in the budget certified for taxes and used in (e)2v above.

[8. The actual and prorated expenditures for all grade/program categories adjusted to determine the "actual cost per student" for tuition purposes as follows:

- i. For the 2008-09 school year through the 2011-12 school year, Abbott Parity Remedy Aid, Educational Opportunity Aid and Discretionary Educational Opportunity Aid received in the 2007-08 school year shall be deducted in accordance with N.J.A.C. 6A:23A-17.1(b)3 in proportion to the average daily enrollment for each category weighted on a basis consistent with N.J.S.A. 18A:7F-49. For this purpose, the average weight for the grade categories in N.J.S.A. 18A:7F-49 shall be used to determine the weighted average daily enrollments for special education classes.]

[9.] **8.** In addition to the tuition charged for each grade category, a receiving district board of education may charge for students receiving services in a resource room an additional amount up to the actual direct instructional cost per student for such services calculated on an hourly basis (an example of the calculation is contained in Policy Bulletin: 100-1 issued by and available from the [Division] **Office of School Facilities and Finance**, [State] Department of Education, PO Box 500, Trenton, New Jersey 08625-0500).

- (f) The receiving district board of education and the sending district board of education shall establish by written contractual agreement a tentative tuition charge for budgetary purposes. Such tentative charge shall equal an amount not in excess of the receiving district board of education's "estimated cost per student" for the ensuing school year for

the purpose or purposes for which tuition is being charged, multiplied by the "estimated average daily enrollment of students" expected to be received during the ensuing school year. Such written contract shall be on a form prepared by the Commissioner.

1. "Estimated cost per student" shall be determined by the receiving district board of education using the appropriate supporting schedule in [their] **its** annual budget for the ensuing year. In lieu of completing the form specified in (c)1 above, a receiving district board of education that has elected to use (c)1 above to certify actual cost per student shall have the option of setting an estimated cost per student up to an amount [which] **that** shall be determined by multiplying the most recent year's certified cost per student by one plus the Consumer Price Index (CPI) as defined in N.J.S.A. 18A:7F-45 for the budget year or 2.5 percent, whichever is greater. If this option is selected and more than one fiscal year has elapsed since the most recent cost per student certification, the receiving district board of education shall further increase the estimated cost per student by multiplying the above by the sum of one plus the CPI for each additional year.
2. "Estimated average daily enrollment" for the purpose of calculating a tentative tuition charge shall be determined as follows:
 - i. A receiving district board of education shall project the number of students in each tuition category expected to be received consistent with the growth in average daily enrollment (ADE) taken from the three most recent school register summary reports prior to the year for which the budget is being prepared.
 - ii. Estimated average daily enrollment (EADE) equals $Y1 \times (1+G)^{<2>}$ where the growth rate $G = 0.5 \times (Y1 - Y3) / Y3$, where G shall not exceed +/-10 percent, Y1 is the ADE two years prior to the year for which the tuition is being estimated, and Y3 is the ADE four years prior to the year for which

the tuition is being estimated. For the purposes of the tentative tuition contract, a receiving district board of education shall apply the same growth rate calculation (as noted above) to project the number of students to be received from each sending district board of education.

3. The sending district board of education and the receiving district board of education shall enter into a written contractual agreement for tuition for the ensuing school year, except for a contractual agreement for a student enrolled in a special education class, no later than seven days prior to the date on which the proposed budget for the ensuing school year is required to be submitted to the executive county superintendent. The sending district board of education shall be required in the contractual agreement to pay 10 percent of the tentative tuition charge no later than the first of each month from September through June of the contract year. The contractual agreement, except for a contractual agreement for a student enrolled in a special education class, shall require [that] all adjustments [which shall be made because of] **resulting from** a difference in cost or in the number of students sent [shall only] **to** be made **only** during the second school year following the contract year. All contractual agreements shall contain a payment schedule for all adjustments[, which] **that** may be necessary.
4. The sending district board of education shall notify in writing the receiving district board of education of the estimated average daily enrollment of students in each tuition category expected to be sent during the ensuing school year no later than December 15 preceding the beginning of the ensuing school year. The receiving district board of education shall notify in writing the sending district board of education of the estimated cost per student in each tuition category for the ensuing school year and the tentative tuition charge no later than February 4 preceding the beginning of the ensuing school year. The receiving district board

of education shall submit to the sending district board of education, on a form prepared by the Commissioner, a copy of its calculations to determine the estimated cost per student in each tuition category for the ensuing school year no later than February 4 preceding the beginning of the ensuing school year.

5. The executive county superintendent in the county in which the receiving district board of education is located shall review any unique circumstances or variations in methodology and mediate all disputes that arise from the determination of tentative tuition charges, including challenges to the estimated average daily enrollment counts generated using the formula in (f)2 above. Such a review shall include examination of the following documents:
 - i. Annual budgets, including supporting documents;
 - ii. Application for State School Aid (ASSA) reports;
 - iii. School register summary reports;
 - iv. Tuition contracts; and
 - v. Any other information deemed necessary.
6. If the Commissioner later determines that the tentative tuition charge established by written contractual agreement, except for a contractual agreement for a student enrolled in a special education class, was greater than the actual cost per student during the school year multiplied by the actual [average daily enrollment] **ADE** received, the receiving district board of education shall return to the sending district board of education in the second school year following the contract year the amount by which the tentative charge exceeded the actual charge as determined above, or, at the option of the receiving district board of education, shall credit the sending district board of education with the excess amount. The receiving district board of education shall make such adjustment for a contractual agreement for a student enrolled in a special education class no later than the end

of the second school year[,] following the contract year.

7. If the Commissioner later determines that the tentative charge established by written contractual agreement, except for a contractual agreement for a student enrolled in a special education class, was less than the actual cost per student during the school year multiplied by the actual average daily enrollment received, the receiving district board of education may charge the sending district board of education all or part of the amount owed by the sending district board of education, to be paid during the second school year following the school year for which the tentative charge was paid. Such adjustment for a contractual agreement for a student enrolled in a special education class shall be made no later than the end of the second school year following the contract year. The executive county superintendent of schools of the county in which the sending district board of education is located may approve the payment of the additional charge over another period, if the sending district board of education can demonstrate that payment during the second school year following the school year for which the tentative charge was paid would cause a hardship.
8. If at the end of the contract year a district board of education anticipates [that] a tuition adjustment will be required in the second year following the contract year, the district board of education [can] **may** restrict fund balance of up to 10 percent of the estimated tuition cost in the contract year in a legal reserve for tuition adjustments established by resolution at June 30. In such case, the district board of education shall:
 - i. Make full appropriation of the legal reserve for the tuition adjustment in the second year following the contract year;
 - ii. Exclude from the net budget cap calculation, if applicable, the budgeted fund balance and appropriation of the legal reserve in the second year

following the contract year for such tuition adjustments; and

- iii. Transfer to the general fund, by board resolution, any interest earned on the investments in a tuition reserve account on an annual basis. Such transfer may be made on a more frequent basis at the discretion of the district board of education.

- (g) The receiving district board of education shall use forms prepared by the Commissioner for certification of the "actual cost per student" for each tuition category according to the rules in this section, for contracts, and for establishing the estimated cost per student for each tuition category for the ensuing school year.
- (h) In any year in which the receiving district board of education can prove, to the satisfaction of the Commissioner, that the charge for the use of the school facilities pursuant to (e)6 above is not adequate, the Commissioner may approve an additional charge for the use of such school facilities.

6A:23A-17.2 Method of determining tuition rate in a new district board of education

- (a) During the first year of operation of a district board of education program that is to receive students, the receiving district board of education shall set the estimated cost per student in each program for which the tuition rate is required and shall base the estimate on budgeted costs. The receiving district board of education shall submit the established estimated cost or costs per student to the Commissioner for approval or disapproval no later than January 1 preceding the beginning of the first year of operation.
- (b) If the Commissioner approves the estimated cost or costs per student, each sending district board of education shall pay tentative tuition charges based upon these estimated costs per student during the first year of operation.
- (c) If, after the first year of operation, the Commissioner determines that the tentative tuition

charge was greater than the actual cost, the receiving district board of education shall return, except if the tentative tuition charge was for a student who was enrolled in a special education class, in the second school year following the first year of operation to each sending district board of education the amount by which the tentative charge exceeded the actual cost, or, at the option of the receiving district board of education, shall credit each sending district board of education with the amount by which the tentative tuition charge exceeded the actual cost. The receiving district board of education shall remit payment or credit for a student who was enrolled in a special education class no later than the end of the second school year[,] following the first year of operation.

- (d) If, after the first year of operation, the Commissioner determines that the tentative tuition charge was less than the actual cost, the receiving district board of education may charge the sending district board of education all or part of the amount owed by the sending district board of education, to be paid, except if the amount owed is for a student who was enrolled in a special education class, during the second school year following the first year of operation. The sending district board of education shall pay the amount owed for a student who was enrolled in a special education class no later than the end of the second school year following the first year of operation.

6A:23A-17.3 County [vocational-technical] vocational school districts funding; public school district tuition payments, post-secondary vocational-technical education fund sources

- (a) [This section will be effective with the calculation of certified rates beginning with fiscal year 2010-2011.] The board of education of any county [vocational-technical] **vocational** school district (**CVSD**) may receive, but not be limited to, the following general fund revenue and fund sources for programs and services provided to students of

local public school districts within or outside the county:

1. State aid received pursuant to N.J.S.A. 18A:7F-43 et seq. and other sources of unrestricted State aid;
2. Funds as may be appropriated by the county pursuant to N.J.S.A.18A:54-29.2 and designated for the programs and services provided to students of local public school districts within the county;
3. Tuition from the sending districts in which the pupils attending the [county vocational-technical school district] **CVSD** reside for a sum not to exceed the actual cost per pupil as determined for the applicable program as follows:
 - i. Tuition rates shall be calculated separately for the following:
 - (1) One tuition rate for regular vocational-technical programs for students sent by local public school districts;
 - (2) One tuition rate for all learning disability program categories for special education programs provided during the regular school year for students sent by local public school districts; and
 - (3) One tuition rate for all learning disability program categories for special education programs provided for extended periods beyond the regular school year (extended school year programs) for students sent by local public school districts;
4. A nonresident fee in addition to tuition for any pupils of sending school districts who are not residents of the county whenever funds have been appropriated by the county.
 - i. The fee shall not exceed the amount of the county's per pupil appropriation to the [county vocational-technical school district] **CVSD**, pursuant to N.J.S.A. 18A:54-20.1.

- ii. The maximum fee per nonresident student shall be calculated by dividing the total county appropriation to the [county vocational-technical school district] **CVSD**, pursuant to N.J.S.A. 18A:54-29.2 and (a)2 above, by the average daily enrollment (ADE) of students who are residents of the county and are sent on a tuition basis to the [county vocational-technical school district] **CVSD** by the public school districts of the county in which the [county vocational-technical school district] **CVSD** is located; and
 5. Reimbursement for any extraordinary special education services provided to an individual student from the student's resident district. The cost of extraordinary special education services shall not be included in the actual cost per pupil for purposes of determining tuition rates for special education programs.
- (b) The board of education of any [county vocational-technical school district] **CVSD** may receive, but not be limited to, the following revenue and fund sources for post-secondary vocational-technical programs provided to post-secondary students who reside within or outside the county:
1. Funds as may be appropriated by the county pursuant to N.J.S.A.18A:54-29.2 and designated for post-secondary vocational-technical programs for post-secondary students within the county; and
 2. Amounts charged pursuant to N.J.S.A. 18A:54-20.1 and 23.4 to each county of residence for post-secondary vocational-technical students who are not residents of the county as follows:
 - i. \$200.00 per each [non-resident] **nonresident** post-secondary vocational-technical student to be applied to the county's share of the [county vocational-technical school district's] **CVSD's** capital expenses; and
 - ii. The average county share of budgeted operating cost per full-time post-secondary vocational-technical student[s] who [are] **is a county** resident

[of the county] as certified by the Commissioner; provided, however, that the said **CVSD** board may, with the approval of the Commissioner, charge and collect a higher annual amount(s) when high-cost or high-priority programs are provided.

- (1) The average county share of budgeted operating cost per full-time post-secondary vocational-technical student[s] who [are residents of the] **is a county resident** shall be calculated by dividing the county contribution, pursuant to N.J.S.A. 18A:54-29.2 and (b)1 above, by the average daily enrollment (ADE) of post-secondary vocational-technical students who are residents of the county.

6A:23A-17.4 Method of determining tuition rates for county [vocational-technical]

vocational school[s] districts

- (a) The term "actual cost per student" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:46-21 and 18A:54-20.1 means the adjusted net cost per student in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined.
 1. The [county vocational-technical school district] **CVSD** board of education shall determine tuition rates for each applicable program category consistent with N.J.A.C. 6A:23A-17.3(a)3.
 2. "Average daily enrollment" for the purpose of determining the "actual cost per student" means the sum of the days present and absent of all students enrolled during the year in the register or registers of the program for which the rate is being determined, divided by the number of days school was actually in session, but in no event shall the divisor for the regular school year programs be less than

180 days.

3. The [county vocational-technical school district] **CVSD** board of education shall adjust the "actual cost per student" for all tuition categories to reflect net costs plus a reasonable surplus.
- (b) Each [county vocational-technical school district] **CVSD** board of education will receive from the Commissioner certification of the "actual cost per student" for each tuition category for a given year utilizing the following:
1. Revenues, expenditures, and fund balances reflected in the [county vocational-technical school district's] **CVSD's** annual independent audit; and
 2. Average daily enrollment data by category submitted by the [county vocational-technical school district] **CVSD** on a form prescribed by the Commissioner.
- (c) The maximum tuition rate per pupil for each education program shall be sufficient to enable the [county vocational-technical school district] **CVSD** to cover the net cost of said program.
- (d) The maximum tuition rate per pupil for each education program for sending public school districts shall be based on the net cost calculated by reducing the amount of general fund expenditures by the following:
1. State aid received pursuant to N.J.S.A. 18A:7F-43 et seq. and other sources of [state] **State** aid, except for restricted State grants;
 2. All other revenue sources other than tuition (such as the county contribution, nonresident fees, Medicaid reimbursements, and miscellaneous revenue) available to fund the education program for sending [public] school districts;
 3. All direct and indirect expenditures that are not associated with the education program for sending public school districts such as [post secondary] **post-secondary** vocational-technical programs;
 4. All expenditures associated with each education program for sending public

school districts but that are funded through sources other than the tuition rate such as extraordinary special education costs, which are separately reimbursed for individual students;

5. Expenditures for Teachers' Pension and Annuity Fund (TPAF) pension and social security; and
6. Refunds of [prior year] **prior-year** tuition adjustments made to sending public school districts.

(e) The Commissioner shall develop and disseminate workpapers for the purpose of allocating revenue, other fund sources, and expenditures amongst the various programs and services within the general fund.

1. With the exception of the regular vocational-technical education program, the actual programs and/or services will vary by individual [county vocational-technical school district] **CVSD**.
2. The purpose of this allocation shall be to isolate the revenue, other fund sources, and expenditures related to the tuition for each regular and special vocational-technical education program by segregating programs and services that are not related to those programs, or are related but funded through sources other than tuition.
3. Expenditures shall be allocated on a direct and indirect basis amongst the various general fund programs and services when funded through sources other than tuition, such as extraordinary special education services.
 - i. Direct instructional expenditures for salaries and related benefits, textbooks, teaching supplies, purchased services, equipment, and other expenses for each program or learning disability program category, as applicable, shall be allocated on an actual basis.
 - ii. When allocating indirect expenditures amongst major programs, such as

regular vocational-technical education, special vocational-technical education, post-secondary vocational-technical education, and other programs, indirect expenditures, except expenditures for Teachers' Pension and Annuity Fund (TPAF) pension and social security, shall be allocated amongst the various programs based on the percent of direct expenditures in each program to the total of all direct expenditures since there is no common average daily enrollment (ADE) equivalent among all programs.

- iii. Services provided as part of a program, such as extraordinary special education services, shall not bear part of the indirect expenditures but shall include only direct instruction and support services expenditures.
- iv. When allocating indirect expenditures between the learning disability program categories of the regular school year and the extended school year, indirect expenditures, except expenditures for Teachers' Pension and Annuity Fund (TPAF) pension and social security, shall be allocated in proportion to the average daily enrollment.

(f) The [county vocational-technical school district] **CVSD** board of education shall adjust, as appropriate, its net cost determined for each tuition category in (d) above to include in the certified maximum tuition rate for each category an amount that will permit the [county vocational-technical school district] **CVSD** board of education to maintain at its discretion for the year the tuition rate applies an ending general fund [free] **unassigned** balance not to exceed the amount permitted pursuant to N.J.S.A. 18A:7F-7.

- 1. If the [county vocational-technical school district] **CVSD** board of education's general fund budget for the prebudget year is \$100 million or less and the ending general fund free balance is less than the greater of six percent of its general fund budget or \$250,000 for the year the tuition rate applies, the [county vocational-

technical school district] **CVSD** board of education shall allocate the difference amongst the tuition categories in proportion to the average daily enrollment for each category. If the amount of the general fund budget for the prebudget year exceeds \$100 million, and the undesignated general fund balance is less than the sum of six percent of the first \$100 million and three percent of the amount which exceeds \$100 million, the [county vocational-technical school district] **CVSD** board of education shall allocate the difference amongst the tuition categories in proportion to the average daily enrollment for each category.

2. If the [county vocational-technical school district] **CVSD** board of education's general fund budget for the prebudget year is \$100 million or less and the ending general fund free balance is equal to or greater than the greater of \$250,000 or six percent of its general fund budget for the year the tuition rate applies, the [county vocational-technical school district] **CVSD** board of education shall not add an amount to the net cost of any tuition category. If the amount of the general fund budget for the prebudget year exceeds \$100 million, and the undesignated general fund balance is in excess of the sum of six percent of the first \$100 million and three percent of the amount [which] **that** exceeds \$100 million, the [county vocational district] **CVSD** board of education shall not add an amount to the net cost of any tuition category.
- (g) The [county vocational-technical school] **CVSD** board of education shall determine the tuition for each program category at the same rate per student for each sending district board of education whether within or [without] **outside** the county pursuant to N.J.S.A. 18A:54-20.1.
- (h) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the nonresident fee), and adjustments to tentative tuition charges upon certification of actual tuition rates by the Commissioner shall be made by

the [county vocational-technical school district] **CVSD** board of education in accordance with N.J.A.C. 6A:23A-17.1(e) except that the [county vocational-technical school district] **CVSD** board of education shall base the tentative tuition rates on [the county vocational-technical school district board of education's] **its** estimated adjusted net cost per student consistent with the calculation in (d) through (f) above.

- (i) The [county vocational-technical school] **CVSD** board of education shall use the "actual cost per student" certification forms, contract forms, and tentative tuition rate forms as prepared and provided by the Commissioner.

6A:23A-17.5 County special services school districts funding; budget limitations; tuition payments

- (a) [This section will be effective with the calculation of certified rates beginning with fiscal year 2010-2011.] The board of education of any county special services school district may receive, but not be limited to, the following revenue and fund sources:
 - 1. Funds [as may be] appropriated by the county, pursuant to N.J.S.A. 18A:46-41;
 - 2. Tuition from the sending districts in which the pupils attending the county special services school district reside for a sum not to exceed the actual cost per pupil as determined for [the] **each** special education program as follows:
 - i. Tuition rates shall be calculated separately for the following:
 - (1) Special education programs provided during the regular school year; and
 - (2) Special education programs provided for extended periods beyond the regular school year (extended school year programs);
 - ii. Tuition may be determined and charged as follows:
 - (1) One tuition rate for the regular school year program; or one tuition

rate for each learning disability program category within the regular school year program; and

- (2) One tuition rate for the extended school year program, when applicable; or one tuition rate for each learning disability program category within the extended school year program, when applicable;

3. A nonresident fee, in addition to tuition for any pupils who are not residents of the county, whenever funds have been appropriated by the county.

- i. The fee shall not exceed the amount of the county's per pupil appropriation to the special services school district, pursuant to N.J.S.A. 18A:46-31.
- ii. The maximum fee per nonresident student shall be calculated by dividing the total county appropriation to the county special services school district by the number of students who are residents of the county and are sent on a tuition basis to the county special services school district by the public school districts of the county in which the special services school district is located; and

4. Reimbursement for [any] extraordinary special education services provided to an individual student from the student's resident district. The cost of extraordinary special education services shall not be included in the actual cost per pupil for purposes of determining tuition rates for regular year or extended year programs.

(b) Tuition rates shall be at the same rate per pupil for each sending district whether within or [without] **outside** the county and consistent with the methodology as chosen in (a)2 above.

(c) The annual aggregate amount of all estimated tuition may be anticipated by the board of education of the county special services school district with respect to the annual budget

of the county special services school district.

- (d) Tuition charged to the resident district shall be deducted from the resident district's State aid and transferred directly to the county special services school district by the Department of Education.
 - 1. The transfers shall equal 1/20th of the tuition charged and shall occur on the same schedule of State aid payments for [the] resident districts.
 - 2. Beginning in May of the preceding year, the county special services school district shall report to the department and [the] resident districts the current enrollments and tuition rates by district. Enrollment changes reported at least 30 days in advance of a scheduled transfer shall be honored.
- (e) Unless specifically designated, county special services school districts shall not receive State aid under the provisions of N.J.S.A. 18A:7F-43 et seq.

6A:23A-17.6 Calculation of maximum general fund budget net of county contribution and maximum average tuition rate

- (a) Pursuant to N.J.S.A. 18A:46-31, the county special services school district general fund budget, exclusive of any county contribution received pursuant to N.J.S.A. 18A:46-41, shall not exceed the general fund budget, exclusive of any county contribution received pursuant to N.J.S.A. 18A:46-41, in the prebudget year adjusted by the CPI or three percent, whichever is greater, plus an enrollment factor.
 - 1. The general fund budget, exclusive of any county contribution, in the prebudget year shall be the sum of all originally budgeted general fund revenue and other fund sources of the prebudget year, except the county contribution of the prebudget year received pursuant to N.J.S.A. 18A:46-41, and shall include, but not be limited to, the following:

- i. Designated, unreserved general fund balance;
 - ii. Tuition from sending public school districts for the regular school year programs;
 - iii. Tuition from sending public school districts for any extended school year programs;
 - iv. [Prior year] **Prior-year** tuition adjustments received from sending public school districts;
 - v. Tuition for programs other than programs for students of sending public school districts;
 - vi. Nonresident fees received pursuant to N.J.S.A. 18A:46-31;
 - vii. Reimbursements from sending public school districts for extraordinary special education costs;
 - viii. Medicaid reimbursements; and
 - ix. All other revenue sources of the general fund, with the exception of the county contribution received pursuant to N.J.S.A. 18A:46-41.
2. The enrollment growth factor shall equal the percentage growth in estimated average daily enrollment (ADE) between the prebudget year and the budget year.
- (b) The maximum general fund budget net of county contribution shall establish the maximum amount of tuition revenue receivable and the associated tuition rate a county special services school district can charge to local public school districts for special education programs for the regular school year.
1. The maximum tuition revenue for the regular school year special education program shall be calculated by deducting from the maximum general fund budget net of county contribution calculated pursuant to this section, all budget year revenue sources and other funding sources of the general fund as delineated in this subsection, except for the county contribution and estimated tuition for the

regular school year special education program.

2. The maximum average tuition rate per pupil for the regular school year special education program shall be calculated by dividing the maximum tuition revenue for the regular school year program calculated in (b)1 above by the estimated ADE for the budget year.
- (c) Any undesignated general fund balance replenishment amount to be included in the tuition rate pursuant to the provisions of N.J.S.A. 18A:46-31 shall not exceed the lesser of the amount needed to maintain a 10 percent undesignated general fund balance or the amount [which] **that** may be added to the tuition rate without exceeding the maximum general fund budget net of county contribution.

6A:23A-17.7 Method of determining tuition rates for county special services schools

- (a) The term "actual cost per student" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:46-31 means the adjusted net cost per student in average daily enrollment for special education classes, based upon audited expenditures for that year.
1. The county special services school district board of education shall include all expenditures for each purpose, except Federal and State grant project expenditures.
 2. "Average daily enrollment" for the purpose of determining the "actual cost per student" is the sum of the days present and absent of all students enrolled during the year in the register or registers of the program for which the rate is being determined divided by the number of days school was actually in session, but in no event shall the divisor for the regular school year program be less than 180 days.
- (b) Each county special services school district board of education shall obtain from the

Commissioner certification of the "actual cost per student" for a given year either for the county special services school district as a whole or for each special education program by learning disability category based on the following:

1. Revenues, expenditures, and fund balances reflected in the county special services school district's annual independent audit;
 2. Average daily enrollment data by category submitted by the county special services school district on a form prescribed by the Commissioner.
- (c) The maximum tuition rate per pupil for the regular school year special education program shall be sufficient to enable the county special services school district to cover the net cost of said program subject to the statutory maximum general fund budget net of county contribution and statutory limitations on undesignated, unreserved general fund balance.
- (d) The tuition rate per pupil for the regular school year special education program for sending public school districts shall be based on the net cost calculated by reducing the amount of general fund expenditures by the following:
1. All revenue sources other than tuition (such as the county contribution, nonresident fees, Medicaid reimbursements, and miscellaneous revenue) available to fund the regular school year special education program for sending public school districts;
 2. All direct and indirect expenditures that are not associated with the regular school year special education program for sending public school districts;
 3. All expenditures associated with the special education program for sending public school districts but that are funded through sources other than the regular school year tuition rate such as extraordinary special education costs, which are separately reimbursed for individual students, and the extended school year special education program for which an additional tuition fee is charged; and
 4. Refunds of [prior year] **prior-year** tuition adjustments made to sending public

school districts.

- (e) The Commissioner shall develop and disseminate workpapers for the purpose of allocating revenue, other fund sources, and expenditures amongst the various programs and services within the general fund.

1. With the exception of the regular school year special education program, the actual programs and/or services will vary by individual county special services school district.
2. The purpose of this allocation shall be to isolate the revenue, other fund sources, and expenditures related to the tuition for the regular school year special education program by segregating programs and services that are not related to the regular school year special education program, or are related but funded through sources other than regular school year special education tuition.
3. Expenditures shall be allocated on a direct and indirect basis amongst the various general fund programs[,] and services when funded through sources other than tuition, such as extraordinary special education services.
 - i. Direct instructional expenditures for salaries and related benefits, textbooks, teaching supplies, purchased services, equipment, and other expenses for each program or learning disability program category shall be allocated on an actual basis.
 - ii. When allocating indirect expenditures amongst major programs, such as regular school year special education, extended school year special education and other programs, indirect expenditures, except expenditures for Teachers' Pension and Annuity Fund (TPAF) pension and social security, shall be allocated amongst the various programs based on the percent of direct expenditures in each program to the total of all direct expenditures since there is no common ADE equivalent among the

programs.

- iii. Services provided as part of a program, such as extraordinary special education services, shall not bear part of the indirect expenditures but shall include only direct instruction and support services expenditures.
- iv. When allocating indirect expenditures amongst the learning disability program categories of the regular school year or amongst the learning disability program categories of the extended school year, indirect expenditures, except expenditures for Teachers' Pension and Annuity Fund (TPAF) pension and social security, shall be allocated amongst all learning disability program categories in proportion to the average daily enrollment.

(f) Pursuant to N.J.S.A. 18A:46-31, an undesignated general fund balance of 10 percent of the general fund budget exclusive of tuition adjustments of prior years may be maintained.

- 1. When estimating the tuition rate for the budget year, the estimated ending undesignated general fund balance of the budget year for this purpose shall be the estimated beginning fund balance of the budget year less any prior-year tuition adjustment refunds to be made to sending public school districts during the budget year.
- 2. When certifying actual final tuition rates, the actual audited ending undesignated general fund balance shall be used.
- 3. Undesignated general fund balance in excess of 10 percent of the general fund budget exclusive of tuition adjustments of prior years shall be deducted from adjusted expenditures calculated pursuant to (d) above for purposes of calculating the regular school year special education program tuition rate.
- 4. When undesignated general fund balance is under 10 percent of the general fund

budget exclusive of tuition adjustments of prior years, an amount may be added to adjusted expenditures calculated pursuant to (d) above for purposes of calculating the regular school year special education program tuition rate subject to the maximum general fund budget net of county contribution calculated pursuant to the provisions of N.J.A.C. 6A:23A-17.6(a)2.

- (g) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the nonresident fee), and adjustments to tentative tuition charges upon certification of actual tuition rates by the Commissioner shall be made by the county special services school district board of education in accordance with N.J.A.C. 6A:23A-17.1(e) except that the county special services school district board of education shall base the tentative tuition rates on the county special services school district board of education's estimated adjusted net cost per student consistent with the calculation in (c) through (f) above. The tentative tuition rate and actual cost per student for a given fiscal year shall be calculated in the same manner chosen pursuant to (b) above.
- (h) The county special services district board of education shall use the "actual cost per student" certification forms, contract forms, and tentative tuition rate forms as prepared and provided by the Commissioner.
- (i) A new county special services school district board of education shall use the method of determining tentative tuition rates contained in N.J.A.C. 6A:23A-17.2.

SUBCHAPTER 18. TUITION FOR PRIVATE SCHOOLS FOR STUDENTS WITH DISABILITIES

N.J.A.C. 6A:23A-18.1 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

"Administrative costs" means those costs defined as administrative costs as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23A-18.4(a)7.

"Advertising costs" means the costs incurred for, but not limited to, the following: cable television, videos, open houses, marketing and public relations. (The cost of a web site, the printing of descriptive brochures, newspapers advertising and advertising in a telephone book are not included in this definition.)

"Assistant Director" means an individual whose job function includes a majority of the following: the formulation of school goals, plans, policies, and budgets and the recommendation of their approval to the school's board of directors; the recommendations for all staff appointments and other personnel actions, such as terminations, suspensions and compensation, including the appointment of the business manager to the school's board of directors; responsibility for school operations and programs including administration, supervision and evaluation of administrators, supervisors, and all other school staff. The holder of this job title shall hold a bachelor's degree from an accredited institution but is not required to hold a school certification.

"Average daily enrollment (ADE)" means the sum of the days present and absent of all school students enrolled in the register(s) of the school divided by the number of days the approved private school for students with disabilities was actually in session for the entire school year rounded to the nearest four decimal places, except in no event shall the divisor be less than 180 days.

"Bonus" means any payment to an employee which:

1. Is not part of the employee's executed contracted salary;
2. Is not part of the employee's base salary in the subsequent school year;
3. Is arbitrary and not based on any specific criteria or qualifications; and
4. Is paid solely at the discretion of management.

"Business Manager" means an individual whose job function includes a majority of the following: financial budget planning and administration, insurance/risk administration, purchasing, financial accounting and reporting, facility planning, construction and maintenance; personnel administration; administration of transportation and food services and data processing. The holder of this job title shall hold a bachelor's degree in business, accounting, finance or economics from an accredited institution or shall hold a standard school business administrator's certificate but is not required to hold a school certification.

"Certified actual cost per student" means the actual allowable cost for the entire school year plus the applicable maximum surcharge/public school placement restricted working capital fund divided by the average daily enrollment for the school year.

"Compensation increases" means any additional payment made to an employee after the start of the fiscal year that would appear on the employee's W-2 and/or should result in a Form 1099 being issued to the employee.

"Conditional approval status" means the approved private school for students with disabilities is precluded from accepting new students.

"Contingent pay increase" means a staff salary increase of either a certain dollar amount or percentage of contracted salary that is paid to all staff in the event that the approved private school for students with disabilities attains the predetermined average daily enrollment for the school year that was filed with and approved by the Commissioner.

"Director" means the same as the Assistant Director above.

"Entertainment expenses" means the cost of providing any type of food/beverage to school officers, school directors/trustees, consultants and/or individuals providing services to the school at any time or to school employees after school hours.

"Executive Director" means the same as the Assistant Director above.

"Extraordinary service" means the services of a one-to-one aide for a student.

"Final tuition rate" means an amount equal to or less than the certified actual cost per student calculated in accordance with N.J.A.C. 6A:23A-18.2(a).

"Instructional costs" means those costs defined as instructional costs as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23A-18.4(a)7.

"Internal Revenue Code" means any Federal tax code section indicated in this subchapter and as amended and supplemented.

"Keyman life insurance" means insurance on staff members for which the school is the beneficiary of the life insurance policy.

"Merit pay increase" means a staff salary increase of either a certain dollar amount or percentage of contracted salary that is based on specific performance criteria that was previously submitted to and approved by the Commissioner.

"New private school for students with disabilities" means an approved private school for students with disabilities in the first two years of operation.

"Private placement student" means a student placed in an approved private school for students with disabilities by other than a New Jersey school district or a New Jersey State agency. For tuition rate purposes for a private placement student, the approved private school for students with disabilities must charge not less than the audited cost per student or the approved private school for students with disabilities must have other means of financing excess costs over the tuition rate charged.

"Public school placement restricted working capital fund" means a non-profit school's total public school restricted assets less the total public school restricted liabilities.

"Public school placement student" means a student placed in an approved private school for students with disabilities by a New Jersey school district or a New Jersey State agency.

"Related services" means the type of services defined in N.J.A.C. 6A:14-1.3.

"School year" means the time period a school is in session either from July through June, August through June or September through June.

"Severance pay" means compensation in addition to regular salaries and wages that is paid by a school to an employee whose employment is being terminated.

"Start up costs" means those costs such as, but not limited to, legal fees, filing fees, furniture, fixtures, equipment and facility costs incurred by a school for the nine-month period prior to receiving Department approval to operate as an approved private school for students with disabilities. A salary is not an allowable start-up cost.

"Surcharge" means the amount of profit that for-profit schools may include in the certified actual cost per student.

"Tentative tuition rate" means the original budgeted tuition rate charged to a sending district board of education for the school year.

N.J.A.C. 6A:23A-18.2 Tuition rate procedures

(a) The board of directors of an approved private school for students with disabilities located in New Jersey shall determine the final tuition rate charged to be an amount less than or equal to the certified actual cost per student. The board of directors shall identify the certified actual cost per student and final tuition rate charged in the audited financial statements submitted to the Department pursuant to N.J.A.C. 6A:23A-18.9.

1. When determining the actual allowable costs for the program, the board of directors shall ensure that such costs are:

- i. Based on all costs required for student instruction from July 1 through June 30;
 - ii. Consistent with the students' individualized education programs (IEP);
 - iii. Inclusive of all costs required to implement all students' IEPs and all related services;
 - iv. Reasonable, that is, ordinary and necessary and not in excess of the cost which would be incurred by an ordinarily prudent person in the administration of public funds; and
 - v. Based on goods actually received and placed in service in the fiscal year they are expensed.
2. If the approved private school for students with disabilities proposes to charge a final tuition rate in excess of 10 percent above the tentative tuition rate charged, the private school shall notify each sending district board of education and the Assistant Commissioner, Division of Finance that such an increase will be charged and the reason for the increase on or before the following dates: December 15th for the first quarter, March 15th for the second quarter, June 15th for the third quarter and September 15th for the fourth quarter, or the next business day when applicable. The determination of a final tuition rate in excess of 10 percent above the tentative tuition rate charged shall be based on the completion of the required quarterly financial report in accordance with N.J.A.C. 6A:23A-18.4(a)11.
- i. If the sending district board of education and the Assistant Commissioner, Division of Finance are not notified on or before the dates noted in (a)2 above, the approved private school for students with disabilities shall charge an increase not to exceed 10 percent of the tentative tuition rate charged.

3. Costs for the program shall include instructional costs and administrative costs, as defined in the chart of accounts, as follows:
 - i. For the 2006-2007 school year and thereafter, minimum instructional costs of 55 percent and maximum administrative costs of 25 percent.
4. Unless otherwise determined pursuant to (b) below, the approved private school for students with disabilities shall charge one tentative tuition rate, charge one final tuition rate, and calculate one certified actual cost per student for the school year.
 - i. An approved private school for students with disabilities shall report all tuition rates on a per diem and school year basis, calculated as the number of enrolled days in the school year multiplied by the per diem rate.
 - ii. An approved private school for students with disabilities that operates both a 10-month and an extended school year shall report tuition rates for both the July/August through June and September through June school years.
5. Except for extraordinary services, an approved private school for students with disabilities shall not bill the sending district board of education separately for related services that are required by a student's initial or subsequent IEP.
6. For programs in operation less than the minimum of 180 days of instruction (September 1 through June 30) the approved private school for students with disabilities shall calculate total costs minus $1/180$ for each day less than the 180-day requirement to determine actual allowable costs.
7. The average daily enrollment for students enrolled in a program for a time period other than a full day or a half-day shall be based on the total number of hours actually enrolled during the school year divided by the total possible number of hours in the school year.

8. For fiscal reporting purposes, an extended school year program means a program in which activities commence on or after July 1 and end on or before August 31 of the same year. For program activities that begin prior to July 1, an approved private school for students with disabilities shall report all costs and revenues in the prior fiscal year.
- (b) An approved private school for students with disabilities may charge one tuition rate per school location for the school year, or separate tuition rates by class type and by school location for the school year. Approved private schools for students with disabilities that choose to charge by class type shall:
 1. Maintain bookkeeping and accounting records by class type and school location for the school year;
 2. Charge a separate tuition rate for each class type served;
 3. Prepare in the Department-prescribed format the audited costs by class type for the first two years that tuition is charged by class type in order for the Commissioner to determine the tentative tuition rates in accordance with (i) below; and
 4. Determine on a pro rata basis the individual share of a particular allowable cost item for a class type, when it is not possible to charge the actual amount expended, in accordance with the following ratios or an alternative method as approved by the Commissioner:
 - i. Ratio of average daily enrollment in each class type to the total average daily enrollment;
 - ii. Ratio of square feet of floor space in each class type to the total square feet of floor space used; and
 - iii. Direct costs.

- (c) An approved private school for students with disabilities shall record direct costs that can be specifically attributed to a program and/or revenue source, in the prescribed bookkeeping and accounting system pursuant to N.J.A.C. 6A:23A-18.4(a)8.
- (d) For indirect costs, which are incurred for a common or joint purpose and not readily assignable to a program and/or a revenue source, an approved private school for students with disabilities may establish indirect cost pools as appropriate for allocation between common or joint purposes at the end of the fiscal year.
- (e) An entity that operates only as an approved private school for students with disabilities and operates one or more tuition programs at one or more locations shall charge their costs as follows:
 - 1. Direct costs for each program as determined pursuant to (c) above; and
 - 2. Indirect costs in accordance with an equitable allocation plan approved by the Commissioner, or in accordance with either of the following ratios:
 - i. Direct costs for each program determined pursuant to (c) above to total direct costs; or
 - ii. Average daily enrollment for each program to total average daily enrollment.
- (f) An entity that operates other programs in addition to an approved private school for students with disabilities program(s) at one or more locations shall charge their costs as follows:
 - 1. Direct costs for each program as determined pursuant to (c) above;
 - 2. Indirect cost centers established as follows:
 - i. A cost center, which shall include indirect costs that are allowable costs in accordance with N.J.A.C. 6A:23A-18; and
 - ii. A cost center, which shall include indirect non-allowable costs in accordance with N.J.A.C. 6A:23A-18.

3. Allowable indirect costs shall be included on a consistent basis in the respective actual cost per student in accordance with an equitable allocation plan approved by the Commissioner or in accordance with either of the following ratios:
 - i. Direct costs for each program determined pursuant to (c) above to total direct costs; or
 - ii. Average daily enrollment for each program to total average daily enrollment.
- (g) Whenever a facility used by an approved private school for students with disabilities is also used for unrelated activities and/or enterprises by related or unrelated parties, all costs, direct or indirect, associated with such facilities and operations shall be charged according to the associated activities and/or enterprises which they benefit. Indirect costs shall be distributed in accordance with an equitable allocation plan approved by the Commissioner.
- (h) A tentative tuition rate shall be established by written contractual agreement between the approved private school for students with disabilities and the sending district board of education. The tentative tuition rate charged shall be an amount not in excess of the maximum tentative tuition rate established in accordance with (i) and (j) below for the ensuing school year, and shall not be changed during the school year regardless of the private school's financial or other circumstances. The written contract shall be on the mandated tuition contract form prescribed by the Commissioner and shall be executed prior to the enrollment of a student.
 1. The contractual agreement shall require the sending district board of education to pay a tentative tuition charge based upon a per diem rate for the total number of days the student was enrolled during the month, for each month the student is enrolled. The per diem rate is determined by dividing the tentative tuition rate for

the school year by the estimated number of days school will be in session, but not less than 180 days, and rounding to the nearest two decimal places.

2. If applicable, the contractual agreement shall require the sending district board of education to pay the approved private school for students with disabilities the tentative tuition charge for extraordinary services.
3. The contractual agreement shall require the sending district board of education to pay the approved private school for students with disabilities the tentative tuition charge based on one of the following options as determined by the approved private school for students with disabilities. The approved private school for students with disabilities shall use the same option for all students enrolled in the approved private school for students with disabilities:
 - i. Option 1: A sending district board of education shall pay the approved private school for students with disabilities no later than the first of each month prior to the services being rendered.
 - (1) For a student already enrolled in the approved private school for students with disabilities, the sending district board of education shall pay the tentative tuition charge by the first day of the second month after services begin. A sending district board of education that fails to pay tuition by the 30th day after services begin may be charged interest by the private school calculated at the rate of one percent per month on the unpaid balance.
 - (2) For a student enrolled after the first of the month, the sending district board of education shall pay the tentative tuition charge for the first two months of enrollment no later than 60 days after the first day services begin. Payment in subsequent months are due by the first of each month prior to the services being rendered. A

sending district board of education that fails to pay tuition by the 30th day after services begin may be charged interest by the approved private school for students with disabilities calculated at the rate of one percent per month on the unpaid balance.

ii. Option 2: A sending district board of education shall pay the approved private school for students with disabilities no later than 60 days after the last day of each month in which services were rendered. A sending district board of education that fails to pay tuition by the 60th day after the last day of a month in which services were rendered may be charged interest by the private school calculated at the rate of one percent per month on the unpaid balance.

(i) The Commissioner will issue notification of the maximum tentative tuition rate for each approved private school for students with disabilities no later than January 1 for the ensuing school year, calculated as follows:

1. The maximum tentative tuition rate per student shall equal the product of the audited actual cost per student for the school year prior to the current school year inflated by twice the spending growth limitation of 2.5 percent and any applicable change to this percentage identified in N.J.S.A. 18A:7F-5.d or the CPI, whichever is greater.

2. The maximum tentative tuition rate includes:

- i. For profit-making schools, the annual surcharge permitted in accordance with N.J.A.C. 6A:23A-18.6; and
- ii. For non-profit schools, a public school placement restricted working capital fund in accordance with N.J.A.C. 6A:23A-18.7.

(j) The Commissioner may approve a higher tentative tuition rate for any year in which the approved private school for students with disabilities can prove to the satisfaction of the

Commissioner that the maximum tentative tuition rate for the year is not adequate and would cause an undue financial hardship on the private school.

1. In the event of such hardship claim, the approved private school for students with disabilities shall submit its request for a higher tentative tuition rate for the entire school year to the Assistant Commissioner, Division of Finance no later than January 31 preceding the beginning of the ensuing school year. The approved private school for students with disabilities shall submit such request with appropriate documentation, which shall include, but may not be limited to, the following information:
 - i. A budget reflecting projected costs, working capital fund or surcharge, estimated enrollment and the requested tuition rate based on this information;
 - ii. A detailed explanation of the need for increases in excess of those already provided in the tentative tuition rate calculation; and
 - iii. A financial report which is properly completed and in the format prescribed by the Commissioner for the six months of operations ending December 31 immediately preceding the school year. This report format is available at the Division of Finance, PO Box 500, Trenton, New Jersey 08625-0500.
 2. When a student's Individualized Education Program team determines the need for extraordinary services.
- (k) The Commissioner will issue notification of certifying that the final tuition rates charged are based on the certified actual cost per student pursuant to (a) above.
- (l) If the Commissioner determines that the tentative tuition rate for the school year established by written contractual agreement is greater than the final tuition rate charged for the school year, the approved private school for students with disabilities shall pay or

credit the difference to subsequent tuition bills for each sending district board of education no later than June 30 of the school year in which the final tuition rate charged is received from the Commissioner, or not more than 30 days after an appeal on a certified amount is finally resolved. The same final tuition rate charged shall be charged to each sending district board of education.

- (m) If the tentative tuition rate for the school year established by written contractual agreement pursuant to (h) above is less than the final tuition rate charged for the school year, the approved private school for students with disabilities may charge each sending district board of education all or part of the difference owed, but the same final tuition rate shall be charged to each sending district board of education. The sending district board of education shall pay the difference on a mutually agreed upon date during the second school year following the year for which the actual cost per student is certified.
- (n) The approved private school for students with disabilities shall prepare the contract and the form to establish the tentative tuition rate for the ensuing school year, and if applicable, the tentative tuition rate for extraordinary services on forms prepared by the Commissioner.
- (o) An approved private school for students with disabilities shall reference as guidance the list of maximum allowable salaries by job title and county according to the job titles contained in N.J.A.C. 6A:9B which pertain to approved private schools for students with disabilities that is published by the Commissioner. Except for administrative job titles referenced in (p) below, maximum allowable salaries are based on the highest contracted salaries (not including payment of unused sick and vacation days and severance pay) of certified staff by job title in a district board of education for any prior year indexed by the average increase in salary between the two preceding school years for each job title. Such salaries are based on a 12-month contract period from July 1 through June 30 and the maximum allowable salary of an approved private school for students with disabilities

staff member shall be prorated for staff employed for less than 12 months. Under no circumstances shall the maximum allowable salary calculated be less than the corresponding salary in the prior year for the same job title and county. Unrecognized job titles shall be correlated to similar job titles in public schools based on their functional activities. The maximum allowable salary of a staff member holding a part-time or split-time position shall be prorated including the salary of staff employed in entities defined in (e) and (f) above.

- (p) An approved private school for students with disabilities shall reference as guidance a list of maximum allowable salaries by administrative and job titles and county according to the job titles contained in N.J.A.C. 6A:9B and 6A:23A-18.1 which pertain to approved private schools for students with disabilities that is published by the Commissioner. Maximum allowable salaries are based on the highest contracted salary (not including payment of unused sick and vacation days and severance pay) by administrative job title for the entire State in a district board of education, special services district board of education and educational services commissions with comparable average daily enrollments for any prior year, indexed by the average increase in salary between the two preceding school years for each job title. Such salaries are based on a 12-month contract period from July 1 through June 30 and the maximum allowable salary of the private school staff member shall be prorated for staff employed for less than 12 months. Each district board of education, special services district board of education and educational services commission with an ADE equal to or less than the highest approved private school for students with disabilities ADE will be considered comparable. Under no circumstances shall the maximum allowable salary calculated, be less than the corresponding salary in the prior year for the same job title. The maximum allowable salary of a staff member holding a part-time or split-time position shall be prorated including the salary of staff employed in entities defined in (e) and (f) above.

- (q) For the 2006-2007 school year and years thereafter:
1. For a staff member who was employed by the approved private school for students with disabilities prior to the 2006-2007 school year whose salary is greater than the maximum allowable salary in accordance with (o) and (p) above, such salary shall be frozen at the 2005-2006 salary level or until such time as the maximum allowable salary in accordance with (o) and (p) above exceeds the 2006-2007 salary level;
 2. For a staff member who was employed by the approved private school for students with disabilities prior to the 2006-2007 school year whose salary is less than the maximum allowable salary in accordance with (o) and (p) above, the maximum salary shall be determined in accordance with (o) and (p) above; and
 3. For a staff member in a new private school for students with disabilities opening on or after July 1, 2006, for a staff member whose employment commences on or after July 1, 2006 at private schools existing as of June 30, 2006 and for a staff member employed by a private school prior to June 30, 2006 whose job title changes effective July 1, 2006 or any time thereafter, the maximum salaries shall be determined in accordance with (o) and (p) above.
- (r) An approved private school for students with disabilities shall employ staff pursuant to the list of the recognized job titles in accordance with N.J.A.C. 6A:9B that require certification and N.J.A.C. 6A:23A-18.1 that require a bachelor's degree, which is published by the Commissioner. An approved private school for students with disabilities shall only hire staff or consultants in job titles that require certification or a bachelor's degree if such titles are included on this list, or if such titles are unrecognized job titles that are approved annually in accordance with N.J.A.C. 6A:9B-5.5. The approved private school for students with disabilities may use unrecognized administrative job titles, but maximum salaries of these titles are restricted in accordance with N.J.A.C. 6A:23A-

18.5(a)9. If an approved private school for students with disabilities hires staff in administrative or support job titles such as but not limited to Chief Executive Officer or Chief Financial Officer, the maximum salaries of such job titles shall be limited to the maximum salary of a director in accordance with N.J.A.C. 6A:23A-18.2(p).

(s) For students who are transitioning back to a program of the sending district board of education for a portion of the enrolled school day, or to a third party location and require the services of an approved private school for students with disabilities staff person, the ADE for tuition rate purposes shall be computed as follows:

1. Regardless of the time period that a student is enrolled in a program outside the approved private school for students with disabilities, the student shall be considered a full time student of the private school, the student's ADE shall be considered as 1.0 and the sending district board of education shall pay the full-time tuition rate.
2. The sending district board of education shall pay all costs associated with the transition service if it involves a third party.

(t) For students who are transitioning back to a program of the sending district board of education for a portion of the enrolled school day or to a third party location, the approved private school for students with disabilities shall compute the tuition rate as follows:

1. The approved private school for students with disabilities shall calculate the student's ADE based on the number of hours enrolled in the program relative to the total number of possible hours of the program.
2. The sending district board of education shall pay all costs associated with the transition service if it involves a third party.

N.J.A.C. 6A:23A-18.3 New approved private schools for students with disabilities

- (a) A prospective applicant shall file an application to establish an approved private school for students with disabilities with the Office of Special Education Programs and obtain approval of such application from the Commissioner prior to operating an approved private school for students with disabilities.
 - 1. A currently approved private school for students with disabilities which is expanding a program to another location or opening a new program is considered a new private school subject to (a) above.
 - 2. A currently approved private school for students with disabilities that is expanding a program, or adding a new class type(s) to be housed in another building at the current location, shall not be considered a new private school for students with disabilities and shall charge as a tentative tuition rate the tuition the school is currently charging.
- (b) An applicant applying for approval as a new private school for students with disabilities shall provide evidence to the Department that there is sufficient need for the new private school as defined as follows:
 - 1. The applicant shall file an application to establish an approved private school for students with disabilities with the Office of Special Education Programs and document the need for a minimum of 24 public school placement students in order to be approved by the Commissioner.
- (c) Applicants that meet the criteria in (b) above, shall be approved as follows:
 - 1. The school shall receive preliminary approval to operate for a two year period, after which the school shall provide documentation that the school has a minimum ADE of 24 public school placement students by the end of the second school year;

- i. A school meeting the minimum ADE of 24 public school placement students by the end of the second school year shall receive new school approval;
- ii. A school not meeting the minimum ADE of 24 public school placement students by the end of the second school year shall have its preliminary approval status revoked and shall no longer be considered an approved private school for students with disabilities;
- iii. Any previously approved private school for students with disabilities that falls below the previous minimum ADE of 16 public school placement students in a school year shall have its status as an approved private school for students with disabilities rescinded and shall be considered preliminarily approved. The school shall attain a minimum ADE of 16 public school placement students by the end of the third school year after the year in question or its approval shall be rescinded and it shall no longer be considered an approved private school for students with disabilities;
- iv. Any new private school for students with disabilities approved in 2004-05 or thereafter that falls below an ADE of 24 public school placement students in a subsequent school year shall be considered preliminarily approved. The school shall attain a minimum ADE of 24 public school placement students by the end of the third school year after the year in question or its approval shall be rescinded and it shall no longer be considered an approved private school for students with disabilities;
- v. Approved private schools for students with disabilities operating in and affiliated with a public school are exempt from (b)2 and (c)1i, ii, iii and iv above; and

- vi. An approval for an approved private school for students with disabilities operating in and affiliated with a public school is restricted to operate in the public school district location only. An approved private school for students with disabilities operating in and affiliated with a public school that chooses to move to a location other than in a public school location shall comply with (a) and (b) above and this section.
- (d) An approved private school for students with disabilities shall amortize start-up costs, if any, over a 60-month period.
- (e) For the first two years of operation of an approved private school for students with disabilities, the tentative tuition rate charged at each site shall be established annually and be based on budgeted allowable costs. An approved private school for students with disabilities shall submit such estimated cost(s) to the Assistant Commissioner, Division of Finance for approval no later than 90 days preceding the beginning of each school year. The proposed budget shall be on a form prepared by the Assistant Commissioner, Division of Finance which provides for, but is not limited to, the following:
 - 1. Fiscal and programmatic data;
 - 2. Projected allowable cost items and projected enrollments;
 - 3. A projected budget that reflects administrative costs not in excess of, and instructional costs not less than, the percentages identified in N.J.A.C. 6A:23A-18.2(a)3 and as defined in the chart of accounts;
 - 4. A report of all funding resources;
 - 5. An affidavit of compliance; and
 - 6. A statement of assurance.
- (f) If the Commissioner approves the tentative tuition rate charged, each sending district board of education shall pay tentative tuition charges based upon the approved estimated costs per student for the first two years of operation.

- (g) If, after each year of operation, the tentative tuition rate charged differs from the final tuition rate charged, the tentative tuition charges will be adjusted in accordance with N.J.A.C. 6A:23A-18.2.
- (h) In addition to this section, new approved private schools for students with disabilities shall be regulated in accordance with this subchapter.

6A:23A-18.4 Bookkeeping and accounting

- (a) An approved private school for students with disabilities shall maintain accounting and bookkeeping systems as prescribed in Financial Accounting for New Jersey Private Schools for students with disabilities issued by the Department in accordance with the following standards:
 - 1. An approved private school for students with disabilities shall maintain accounts in accordance with generally accepted accounting principles (GAAP) as defined by the American Institute of Certified Public Accountants, except as already modified in this chapter.
 - 2. At a minimum, an approved private school for students with disabilities shall use accrual accounting on a quarterly basis.
 - 3. An approved private school for students with disabilities shall capitalize fixed asset expenditures of \$2,000 or more and depreciate such expenditures using the straight line depreciation method and using a useful life consistent with current Federal tax law as defined in Internal Revenue Code Section 168 and class lives as defined in that section (also see IRS Publication 946), except for real property which may be depreciated using a useful life of 15 years or the term of the original mortgage, whichever is greater.
 - 4. An approved private school for students with disabilities shall capitalize leasehold

improvements and depreciate such improvements using the straight-line method and a useful life equal to that of the lease, but not less than five years.

5. An approved private school for students with disabilities shall maintain asset, liability and fund balance accounts, as well as expenditure and revenue accounts.
6. Non-profit organizations shall maintain financial records on a fund basis, which requires that restricted or unrestricted donations shall be maintained in funds separate from the public school restricted fund. Costs incurred as a result of restricted or unrestricted donations shall be charged to the appropriate fund and not through the public school restricted fund. Profit-making organizations shall maintain financial records on a modified fund basis.
7. A chart of accounts issued by the Commissioner shall be maintained by each approved private school for students with disabilities. Effective July 1, 2002, a uniform minimum chart of accounts consistent with Financial Accounting for Local and State School Systems 2003, developed by the National Center for Education Statistics, incorporated herein by reference, as amended and supplemented as prepared, published and distributed by the Commissioner for use in the accounting systems of all approved private schools for students with disabilities shall be used for financial reporting to the Department. For entities that operate other programs and the total private school tuition expenses are less than 51 percent of the entity's total expenses, the Commissioner may approve the use of an alternative chart of accounts, but the private school shall provide evidence that such chart of accounts may be cross-walked to the prescribed chart of accounts.
8. If multiple facilities for a private school have been approved, financial information shall be segregated by facility in the bookkeeping records. If the approved private school for students with disabilities chooses to charge tuition

rates by class type, financial information shall be segregated by class type in the bookkeeping records. Bookkeeping records shall include, but not be limited to:

- i. Cash receipts journal;
- ii. Cash disbursement journal;
- iii. General ledger;
- iv. Tuition ledger;
- v. Payroll journal; and
- vi. Fixed asset inventory.

- 9. An approved private school for students with disabilities shall maintain documentation to verify all amounts recorded in the general ledger. Purchase orders shall be prepared in detail to document all payments for goods and services. Invoices or cash register receipts shall be attached to their related purchase orders to support all purchases of goods and services. Detailed vouchers signed by the payee shall be attached to their related purchase orders to support all payments for personal services, employee mileage reimbursements or any payment for which invoices or cash register receipts are not used.
- 10. An approved private school for students with disabilities shall prepare a payroll that is supported by an accurate employee time record in a format prescribed or approved by the Commissioner, signed by the employee and supervisor, prepared in the time period in which the work was done and completed at minimum semi-monthly. An employee time record shall be prepared for all employees of the private school for students with disabilities, including all administrative employees.
- 11. An approved private school for students with disabilities shall prepare a financial report in a format prescribed or approved by the Commissioner each quarter at a minimum for the school year program. This report shall be submitted to the

school's governing body and its acceptance shall be documented in the minutes of the meetings.

12. An approved private school for students with disabilities shall maintain acceptable internal control practices, which include the separation of duties such as the recording and authorizing of checks and purchase approvals.
13. An approved private school for students with disabilities shall use the mandated tuition contract prescribed by the Commissioner for each student received from a district board of education. The mandated tuition contract may only be revised by the approved private school for students with disabilities or the sending district board of education with prior written approval by the Commissioner.
14. An approved private school for students with disabilities that incurs contingent pay increases shall have in place an employee contract that contains the criteria by which the increase will be paid. The plan shall be submitted to the Commissioner for approval prior to implementation. The private school shall make payment of such increase upon achievement of the contractual contingencies as set forth in the approved plan. Such payment shall not be at the discretion of management. The employee contract shall contain the following:
 - i. The date and signature of both the staff member and authorized school representative;
 - ii. The average daily enrollment contingency the approved private school for students with disabilities must achieve in order to generate the increase; and
 - iii. The specific dollar amount or percentage of original contracted salary to be paid pursuant to (a)14ii above.
15. An approved private school for students with disabilities that incurs merit pay increases shall have adopted a formal board policy that outlines the criteria of the

merit pay plan(s). The plan(s) shall be submitted for approval to the Commissioner prior to implementation. The private school shall make payment of such merit pay increase upon achievement of the criteria set forth in the approved plan, but no later than the following January 31st. Such payment shall not be at the discretion of management. The plan(s) shall include the following:

- i. Eligibility for all employees;
 - ii. Basis by which the pay is earned;
 - iii. The amount of the awards by plan(s);
 - iv. The maximum number of awards to be given by plan(s) for each year; and
 - v. The date of board approval and date of initiation of the plan(s).
16. A petty cash fund shall be approved by the governing body and supported by documentation. The fund shall not exceed \$ 1,500 and, disbursements shall not exceed \$ 150.00, except in the case of an emergency.
17. A student activity fund shall be approved by the governing body and supported by documentation. Revenues derived from public school placement tuition shall be used to supplement, not supplant, student contributions.
18. A mileage record shall be maintained for each school-owned vehicle, leased vehicle or vehicle contained in a related party transaction involving the purchase of transportation services in a format prescribed by the Commissioner. The mileage record shall be maintained on a trip by trip basis and include any personal use including to/from work commutation. At the end of the fiscal year, the percentage determined by the total personal miles to total miles shall be applied to all costs associated with the vehicle(s) and those costs shall be excluded from the actual allowable costs. Vehicle costs may include, but not be limited to, the following: depreciation, lease costs, gas, oil, repairs and maintenance, insurance and car phone.

19. Upon request from the Commissioner:
 - i. A profit-making approved private school for students with disabilities shall submit a copy of the Internal Revenue Service (IRS) tax return; and
 - ii. A non-profit approved private school for students with disabilities shall submit a copy of IRS form 990.
20. An approved private school for students with disabilities shall maintain all pertinent financial record(s) for a period of seven years after the November 1 due date of the audit.
21. A non-profit entity that has chosen to cease operations as a non-profit private school for students with disabilities shall distribute its accumulated public school placement restricted working capital fund to each sending district board of education that had enrolled students during the private school's last five years of operation.
 - i. The distribution shall be based on each district board of education's total ADE in the private school for the last five years of operation to the private school's total ADE for the same period.
 - ii. Within 90 days of filing the required year-end audited financial statements with the Department in accordance with N.J.A.C. 6A:23A-18.9, the private school shall submit to the Commissioner a listing of the total distribution of the public school placement restricted working capital fund, by sending district board of education.
22. An approved private school for students with disabilities shall ensure that school staff, outside consultants and subcontractors including members of a management company hold the proper school certification, license or bachelor's degree required pursuant to N.J.A.C. 6A:23A-18.1 to provide the services being rendered.

- (b) An approved private school for students with disabilities that receives a refund(s) from a current or prior year expenditure or cancels an accounts payable shall apply such refund or accounts payable as a reduction to the general expenditure account charged to reduce the current year expenditure account. If the original expenditure account charged is not charged in the current school year, such amount(s) shall be used to reduce total expenditures in the current year.
- (c) An approved private school for students with disabilities shall execute an employment contract annually with each school employee whose position requires a certificate, license or a bachelor's degree, which contains the following information:
1. The name of employee;
 2. Dates of employment;
 3. Work hours;
 4. Certification(s) and/or degree(s) held;
 5. A job description;
 6. The job title; and
 7. The salary.
- (d) An approved private school for students with disabilities shall request approval from the Department to purchase or rent in a related party transaction an administrative or business office at a location outside of the approved private school for students with disabilities.
- At the Department's request:
1. The County Office of Education shall conduct an on-site facility review to determine if there is sufficient space at the school for these operations; and/or
 2. The approved private school for students with disabilities shall submit documents to the Assistant Commissioner, Division of Finance that substantiate the need for additional space.
- (e) An approved private school for students with disabilities shall ensure that its employees

provide:

1. The instructional program to the students for which they are compensated during the hours the school is in session; and
 2. All administrative and business functions on premises that are either owned or leased by the approved private school for students with disabilities, and during the private school's normal hours of operation with the exception of meetings and/or conferences held offsite related to the job function. If this is not deemed feasible for any administrative or business function, the school shall provide written justification to the Assistant Commissioner, Division of Finance and request approval of any reasonable alternative work location.
- (f) An approved private school for students with disabilities shall establish, maintain and distribute an employee handbook to all staff. The approved private school for students with disabilities shall include in the employee handbook an outline of all employee fringe benefits. All employee fringe benefits shall be adopted in a board of directors meeting and documented in the board minutes prior to implementing the fringe benefit. Employee fringe benefits that are consistent with N.J.A.C. 6A:23A-18.5(a)23 for which costs are deemed allowable are as follows:
1. Health insurance coverage (including dental and vision);
 2. Life insurance;
 3. Type(s) and qualification for retirement plan(s);
 4. Severance pay;
 5. Vacation;
 6. Long term disability;
 7. Sick day and personal day benefits;
 8. Premium-only plans;
 9. Cafeteria plans;

10. Section 125 plans;
 11. Tuition reimbursement; and
 12. Other benefits for which an approved private school for students with disabilities has applied and received written approval from the Commissioner.
- (g) An approved private school for students with disabilities that loans funds to any party shall charge interest at a rate equal to the prime rate. The independent auditor shall compute imputed interest on those funds that are loaned at less than the prime interest rate or interest free. Such imputed interest revenue shall be netted against any short-term interest costs first, and then long term interest costs incurred by the private school. If the approved private school for students with disabilities has not incurred any interest costs, the imputed interest revenue shall be netted against costs incurred in account numbers classified as undistributed expenditures--business and other support services.
- (h) An approved non-profit private school for students with disabilities that has a positive public school placement restricted working capital fund balance and a net deficit fund balance in all other fund balances (restricted and unrestricted) for more than three consecutive fiscal year-ends shall submit to the Assistant Commissioner, Division of Finance within 60 days after the end of the third fiscal year a corrective action plan to reduce the net deficit fund balance. The approved private school for students with disabilities shall be subject to monitoring by the Department to ensure implementation of and adherence to the corrective action plan. If the private school fails to decrease the deficit within three years, the private school shall be placed on conditional approval status until such time that the deficit decreases.
- (i) An approved private school for students with disabilities that accumulates employee sick and/or vacation leave shall do so in accordance with Financial Accounting Standards Board Statement No. 71 (FASB; 401 Merritt 7, PO Box 5116, Norwalk, CT 06856-5116) incorporated herein by reference, and shall include these costs in program expenses only

when the compensation is actually paid.

- (j) An approved private school for students with disabilities shall use the job titles that are in use in the public schools in accordance with N.J.A.C. 6A:9B and the list published each year by the Commissioner, or those approved in accordance with N.J.A.C. 6A:9B-5.5.
- (k) An approved private school for students with disabilities shall issue compensation increases after the start of the fiscal year only in accordance with N.J.A.C. 6A:23A-18.2(q), and when the increase:
 - 1. Is due to a staff member(s) promotion that results in additional job responsibilities;
 - 2. Is due to a staff member(s) attaining a higher degree or certification;
 - 3. Is due to a staff member(s) additional job responsibilities such as a coach, class or school advisor or mentor;
 - 4. Is in accordance with (a)14 or 15 above; or
 - 5. Has been approved by the Department after review of a formal written request to the Assistant Commissioner, Division of Finance documenting the facts supporting the increase, if none of the above applies.
- (l) An approved private school for students with disabilities shall ensure that employees which are new to the positions listed below on or after July 1, 2006, possess the appropriate bachelor's degree as defined in N.J.A.C. 6A:23A-18.1. In addition, approved private schools for students with disabilities shall ensure that employees functioning in the following positions on or before June 30, 2006 either currently possess the appropriate bachelor's degree as defined in N.J.A.C. 6A:23A-18.1 or, will obtain the proper bachelor's degree no later than June 30, 2006, or will be removed from the position:
 - 1. Director;
 - 2. Assistant Director;

3. Executive Director; and
 4. Business Manager.
- (m) An approved private school for students with disabilities that incurs costs for a retirement plan(s) in accordance with N.J.A.C. 6A:23A-18.5(a)31 and/or medical benefits for retired employees in accordance with N.J.A.C. 6A:23A-18.5(a)56 shall include these costs in the certified actual cost per student on the cash basis of accounting.
- (n) An approved private school for students with disabilities shall have the paraprofessional staff approved in accordance with N.J.A.C. 6A:9B-7.1 and any changes to an approved job description shall be resubmitted for approval.
- (o) An approved private school for students with disabilities shall comply with the maximum salaries determined in accordance with N.J.A.C. 6A:23A-18.2(o) and (p) and restricted in accordance with N.J.A.C. 6A:23A-18. 5(a) 6, 8 and 9 regardless of the job titles used and whether these job titles comply with the list of job titles published by the Commissioner.
- (p) An approved private school for students with disabilities shall under no circumstances other than in accordance with N.J.A.C. 6A:23A-18.4(k), provide compensation increases after the start of the fiscal year.

6A:23A-18.5 Non-allowable costs

- (a) Costs that are not allowable in the calculation of the certified actual cost per student include the following:
1. An administrative cost in excess of and/or instructional cost less than the percentages indicated in N.J.A.C. 6A:23A-18.2(a)3;
 2. The cost of maintaining an administrative office in a private home or other residence;
 3. An advertising cost in excess of 0.5 percent of the private school's for students

- with disabilities actual allowable costs not including advertising;
4. Any cost associated with lobbying including salaries and fringe benefits;
 5. Any cost other than those governed by (a)52 below associated with lobbying in an attempt to influence:
 - i. The outcome(s) of any Federal, State, or local referendum, initiative or similar activity; or
 - ii. The introduction of Federal legislation, State legislation or State rulemaking, or the enactment or modification of any Federal legislation, State legislation or State rulemaking.
 6. The salary of a professional staff member, consultant or subcontractor including a member of a management company who is not certified but is functioning in a position requiring certification in accordance with N.J.A.C. 6A:9B or bachelor's degree required in accordance with this subchapter;
 7. The salary and fringe benefits of a staff member for time not expended and/or services not performed except in accordance with (a)58 and 59 below;
 8. A salary in excess of the associated maximum allowable salary determined in N.J.A.C. 6A:23A-18.2(o), (p) and (q) for a staff member or consultant whose position requires certification, license or a bachelor's degree including a director, assistant director, executive director, and business manager.
 - i. An approved private school for students with disabilities shall prorate salaries for such part-time or split-time positions, including salaries in entities described in N.J.A.C. 6A:23A-18.2(e) and (f);
 - ii. The part-time and split-time maximum allowable salary is calculated as follows:
 - (1) Multiply the staff member's total salary by the percentage of time attributed to the approved private school for students with

disabilities position;

- (2) Multiply the maximum allowable full time salary for the position by the percentage of time attributed to the approved private school for students with disabilities position; and
- (3) Subtract the amount calculated in (a)8ii(2) above from the amount calculated in (a)8ii(1) above and if the result is a positive amount this is the non-allowable part-time or split-time salary.

9. A salary of an employee not covered by (a)6 above in excess of the lowest maximum allowable salary in the same county according to the list of maximum allowable salaries determined in N.J.A.C. 6A:23A-18.2(o), (p) and (q) whose position does not require certification, license or bachelor's degree, including an individual with the director, assistant director, executive director, or business manager job title whose job function(s) are not consistent with those functions described in N.J.A.C. 6A:23A-18.1.

i. An approved private school for students with disabilities shall prorate salaries for such part-time or split-time positions including salaries in entities described in N.J.A.C. 6A:23A-18.2(e) and (f).

ii. The part-time and split-time maximum allowable salary is calculated as follows:

- (1) Multiply the staff member's total salary by the percentage of time attributed to the approved private school for students with disabilities position;
- (2) Multiply the lowest maximum allowable salary in the same county by the percentage of time attributed to the approved private school for students with disabilities position; and
- (3) Subtract the amount calculated in (a)9ii(2) above from the amount

calculated in (a)9ii(1) above and if the result is a positive amount

this is the non-allowable part-time or split-time salary.

10. The cost of fringe benefits that are based on a non-allowable salary;
11. A legal, accounting or consultant fees resulting from a frivolous challenge to a State audit or financial review or the prosecution of a claim against the State. The Commissioner shall determine whether the challenge is frivolous by considering factors that include, but may not be limited to, the following:
 - i. Overall merit of the claim; and
 - ii. Whether the challenge serves the public interest;
12. A consultant fee for services:
 - i. That are not detailed in an executed written contract that includes a list of the nature of the services provided, the approximate number of days to complete the work, the charge per day and the product or outcome of the consultation; and
 - ii. Are performed by a consultant who does not possess the appropriate school certification when such certification exists;
13. Total contributions, donations, awards and scholarships in excess of \$1,500;
14. Depreciation that is unacceptable under N.J.A.C. 6A:23A-18.4(a)3 and (a)4, and depreciation:
 - i. On donated goods and assets;
 - ii. That is not based on estimated straight-line method;
 - iii. On autos in excess of the dollar or percentage limitation contained under Internal Revenue Service Code Section 280F including any passenger vehicle not used in transporting students or supplies without regard to weight class exceptions defined in Section 280F(d)(5)(A);
 - iv. On a stepped up basis resulting from the sale to a related party as defined

in Internal Revenue Service Code Section 318 for Constructive Ownership of Stock. For a not-for-profit organization, Section 318 will apply to the members of the Board of Directors or related parties as defined in Section 267(b) or 267(c) of the Internal Revenue Code unless the gain from such a sale was used to offset tuition for a prior year; and

- v. On a stepped up basis from transfer from one spouse to another upon death as defined in Internal Revenue Code Section 1014;
- 15. The yearly cost of a lease for a vehicle in excess of the maximum depreciation allowed in any given year without regard to special deductions allowed by the Internal Revenue Code under Section 280F(a)(1)(A) (for example: \$4,100 for second year can be applied to all years of the lease) including the amortization of the lease down payment over the term of the lease. This applies to any passenger vehicle not used for transporting students or supplies without regard to the weight class exceptions under 280F(d)(5)(A);
 - 16. An investment expense associated with the purchase/sale of stock, securities, other investment instruments or other investments not associated with the education of disabled children;
 - 17. Total costs in excess of \$1,000 incurred for entertainment expenses;
 - 18. The cost of food/beverages in excess of \$3,000 for activities such as, but not limited to, staff meetings, parent/teacher meetings, workshops and professional development seminars for parents or teachers;
 - 19. The cost of a fine or penalty which results from a violation of, or failure by, the school to comply with a Federal, State and/or local law or rule;
 - 20. The cost of meals:
 - i. For students when the meals do not meet the nutritional requirements of the Child Nutrition Program as administered by the New Jersey

Department of Agriculture;

- ii. Effective July 1, 2007, for students when a non-profit approved private school for students with disabilities has not applied for and received funding from the Child Nutrition Program as administered by the New Jersey Department of Agriculture except when the private school has received, on an annual basis prior to the start of the fiscal year, school board resolutions from a majority of the school districts that have contracted to send students to the private school in that fiscal year, which resolves the district board of education does not require the private school to apply for and receive funding from the Child Nutrition Program (CNP);
 - iii. Effective July 1, 2007, for students when the approved private school for students with disabilities has not charged students for paid and reduced meals in accordance with the income eligibility criteria established by the Child Nutrition Program as administered by the New Jersey Department of Agriculture except when the private school has received, on an annual basis prior to the start of the fiscal year, school board resolutions from a majority of the school districts that have contracted to send students to the private school in that fiscal year, which resolves the district board of education does not require the private school to charge students for a reduced and/or paid meal; and
 - iv. For staff except as allowable in accordance with N.J.A.C. 6A:23A-18.5(a)18;
- 21. The cost of keyman insurance, except where a term insurance policy is required by a lender as collateral for a loan;
 - 22. The cost of an employee's life insurance coverage, both term and whole life policies, in excess of 3.5 times their gross salary;

23. Fringe benefits:
- i. When the benefits are determined in an arbitrary or capricious manner including, but not limited to, class of employee whether by title or position rather than on an existing written uniform policy based on an equitable standard of distribution, such as years of service or education. The criteria cannot be exclusionary regardless if based on an equitable standard of distribution, such as years of service or education;
 - ii. When the fringe benefit has not been adopted by the school's Board of Director's at a board meeting prior to the implementation of the benefit, documented in the board minutes and the employees were not made aware of the policy; and
 - iii. When the benefit is not listed in N.J.A.C. 6A:23-4.4(f) or not approved by the Commissioner;
24. The cost of fund raising, such as a financial campaign, an endowment drive or solicitation of a gift and bequest that is done to raise capital or obtain a contribution;
25. Goodwill;
26. Interest costs on loans when:
- i. Interest is in excess of the general prevailing rate at the time the loan was taken;
 - ii. The loan is a less-than-arm's length/related party transaction which has not been previously approved by the Department and has not been repaid in accordance with the Department's approval letter; and
 - iii. The loan is not exclusively used to meet program needs;
27. Interest costs on long-term loans or mortgages when:
- i. The loan is used for other than financing of fixed assets;

- ii. The loan is not secured by the fixed asset being financed; and
 - iii. The interest costs are on the portion of the loan term that exceeds the recovery period for depreciation of the fixed asset securing the loan;
- 28. A loss incurred on the sale or exchange of fixed assets between related parties;
- 29. The write-off of uncollected accounts receivable (bad debts) before three years has elapsed and before a reasonable effort has been made to collect such accounts receivable;
- 30. An ordinary living expense for a student that is normally assumed by the parent of a student attending a public day school;
- 31. Retirement plan costs that are:
 - i. Not in conformance with the Employee Retirement Income Security Act of 1974, P.L. 93-406, and its successor legislation and that exceed costs allowed by the Internal Revenue Service;
 - ii. For a non-qualified retirement plan(s);
 - iii. For a defined contribution plan in excess of the maximum percentage and maximum dollar amount, (see Internal Revenue Code Section 415(c)) as the lesser of 100 percent of the employee's compensation or \$44,000;
 - iv. For a defined benefit plan in excess of an amount, by employee, which would allow the defined plan to provide a benefit in excess of the percentage of the employee's number of years of service divided by 55 times the highest three year average salary and at an age prior to age 55;
 - v. For contributions to a retirement plan that are not applied consistently in accordance with (a)23 above even if in compliance with ERISA. Such excess contributions as determined will be deemed a non-allowable cost;
 - vi. Not paid to a qualified plan within nine months of the end of the fiscal tax year of the approved private school for students with disabilities;

- vii. Not paid in accordance with the fringe benefits criteria in (a)23 above; and
 - viii. If applicable, not in conformance with a church plan as defined in ERISA;
- 32. The cost associated with a conference, meeting or seminar held in countries not contiguous to the United States;
 - 33. The costs of a contingent pay increase or merit pay award when such amount(s) were not in accordance with N.J.A.C. 6A:23A-18.4(a)14 or 15, or the contingent pay increase or merit pay award(s) are not consistent with the plan(s) submitted to and approved by the Commissioner prior to implementation;
 - 34. The cost of travel involving the difference between first-class air accommodations and less than first-class air accommodations, except when less than first-class accommodations are not reasonably available, in which case, the approved private school for students with disabilities shall obtain documentation from the airline or travel agent;
 - 35. The cost for meals and hotel accommodations associated with daily or overnight travel in excess of those contained in New Jersey Office of Management and Budget (OMB) Circular Letter 98-03 OMB as amended and supplemented;
 - 36. A payment of a bonus;
 - 37. A loss on an investment;
 - 38. The cost of staff salaries, supplies or printing and reproduction of a material for a research activity;
 - 39. Payment of Federal, State and local income taxes on income other than tuition;
 - 40. Any cost associated with travel to and from the officer's or employee's home and the school or agency;
 - 41. All personal expenses, such as a personal travel expense or repair on a personal vehicle;
 - 42. Personal use of a school-owned or leased vehicle, which includes to/from work

- commutation as determined in accordance with N.J.A.C. 6A:23A-18.4(a)18;
43. Any costs associated with a school-owned vehicle, leased vehicle or vehicle contained in a related party transaction involving the purchase of transportation services where a mileage log was not maintained;
 44. A business-incurred charge for a privately owned vehicle in excess of the mileage rate allowed by the United States Internal Revenue Service for automobile travel;
 45. Transportation costs for a student to and from school, except where the student's IEP requires after school activities;
 46. Rental costs for buildings and equipment when the lessor is not a separate legal entity;
 47. Costs related to transactions between related parties in which one party to the transaction is able to control or substantially influence the actions of the other. Such transactions are defined by the relationship of the parties and include, but are not limited to, those between divisions of an institution; institutions or organizations under common control through common officers, directors, or members; and an institution and a director, trustee, officer, or key employee of the institution or his or her immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. Such costs shall include, but are not limited to:
 - i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (for example, straight line depreciation in accordance with N.J.A.C. 6A:23A-18.4(a)3, mortgage interest, real estate taxes, property insurance and maintenance costs) incurred by the related property owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The approved private school for students with disabilities shall include in the lease agreement a list of

anticipated costs to be incurred by the property owner, prepared in the format supplied by the Commissioner, signed by the property owner and notarized;

- ii. Rental costs under a sub-lease arrangement with a related party for buildings and equipment in excess of the actual allocated costs related to the lease (such as rent, lease commission expense and maintenance costs) incurred by the sub-lessor. Profit, return on investment or windfall of any kind shall not be included in the sub-rental cost. The sub-lease agreement shall include a list of anticipated costs to be incurred by the sub-lessor, signed by the sub-lessor and notarized;
- iii. Cost of purchasing/lease purchasing buildings, equipment or other goods from related parties in excess of the original cost to the related party, less depreciation calculated using the straight line method;
- iv. Cost of personal services paid to a related party when such services are provided by an employee or consultant of the approved private school for students with disabilities acting as an employee or agent of the related party. Cost of personal services includes all remuneration, paid or accrued, for services rendered during the school year including, but not limited to, wages, salaries, management fees and fringe benefits; and
- v. Cost of the purchase of services in excess of the actual allocated costs of ownership (such as salaries, fringe benefits, insurance, operation, maintenance, straight-line depreciation) incurred by the related party owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The approved private school for students with disabilities shall include in the purchase agreement a list of anticipated costs to be incurred by the related party, prepared in the

format supplied by the Commissioner, signed by the property owner and notarized;

48. Cost of a less-than-arm's length/related party transaction when the related party does not provide documentation to support the actual costs of ownership to the Commissioner when requested, or does not allow the Commissioner access to such information for review and audit during normal business hours.

Documentation shall include, but is not limited to:

- i. The related parties' tax returns; and
 - ii. The related parties' paid bills and canceled checks concerning the transaction;
49. Rental costs under sale and leaseback arrangements in excess of the amount that would be incurred had the organization continued to own the property;
50. Indirect and direct costs associated with unrelated activities or enterprises as defined in N.J.A.C. 6A:23A-18.2(g);
51. Cost of the year-end audited financial statements prepared by an individual who does not meet the requirements contained in N.J.A.C. 6A:23A-18.9(a);
52. Costs for membership in civic, business, technical and professional organizations when the cost is:
- i. Not reasonably related to the value of the services or benefits received;
 - ii. For membership in an organization that devotes any activities to influencing legislation or state regulation(s) not directly related to the educational instruction program of disabled students and such activities are not subsidized by sources other than membership fees from approved private schools for students with disabilities;
 - iii. Not an established annual rate charged to all members, but one which is periodically adjusted during the year; or

- iv. Not supported by an annual affidavit signed by the organization's board of directors indicating that all legal and lobbying costs not directly associated with the educational instruction programs for disabled students were funded by sources other than dues from approved private schools for students with disabilities;
- 53. Salary of a staff member that is not properly supported by the employee's time record in a format prescribed or approved by the Commissioner in accordance with N.J.A.C. 6A:23A-18.4(a)10;
- 54. A salary or payment made to a member(s) of the board of directors/trustees for services performed in their capacity as a member of the board of director/trustees;
- 55. Cost of a pension plan and/or medical benefits for current or retired members of the board of directors/trustees;
- 56. Cost of medical benefits for retired employees who have not reached the age of 55 and who were employed a combination of less than 25 years in a New Jersey public school, a New Jersey public agency or a New Jersey approved private school for students with disabilities and have less than 10 years of service in an approved private school for students with disabilities;
- 57. Costs of salaries and fringe benefits of unrecognized position titles that are not properly approved in accordance with N.J.A.C. 6A:9B-5.5;
- 58. Cost of employee severance pay:
 - i. In excess of four weeks' salary; and
 - ii. If, in addition, the cost of a buyout of the employee's contract;
- 59. Cost of a buyout of an employee contract:
 - i. In excess of 90 days' salary; and
 - ii. If, in addition, the cost of the employee's severance pay;
- 60. Cost of a salary or consultant fee paid to a full-time employee or consultant for

- performing more than one administrative function in the approved private school for students with disabilities;
61. Cost to purchase or rent in a related party transaction an administrative office or business office at a location other than at the approved private school for students with disabilities location that was not approved in accordance with N.J.A.C. 6A:23A-18.4(d);
 62. Cost of compensation increases paid after the start of the fiscal year not in accordance with N.J.A.C. 6A:23A-18.4(k); and
 63. Start-up costs in excess of those allowed in N.J.A.C. 6A:23A-18.3(d);
 64. Costs including salaries and fringe benefits of employees providing services not in compliance with N.J.A.C. 6A:23A-18.4(e)2;
 65. The cost of a violation in accordance with N.J.S.A. 18A:6-7.5 for any staff member that does not have:
 - i. A criminal history clearance prior to starting employment or;
 - ii. An application for employment on an emergent basis in accordance with N.J.S.A. 18A:6-7.1c;
 66. Legal costs for an approved private school for students with disabilities and/or for a school representative(s), which includes an owner, employee or agent that have plead guilty and/or are found to be guilty or liable in a case involving the misuse of funds or fraud (criminal or civil);
 67. The salary in excess of the associated maximum salary identified in N.J.A.C. 6A:23A-18.2(r) and determined in accordance with N.J.A.C. 6A:23A-18.4(o) and (p); and
 68. Costs found to be patently unreasonable by the Commissioner or his or her representative(s) or the independent auditor/accountant.

6A:23A-18.6 Surcharge

- (a) For profit-making schools, the school's tuition rate may include an annual surcharge up to 2.5 percent of the private school's allowable actual costs.
- (b) For profit-making schools, interest earned in accordance with N.J.A.C. 6A:23A-18.2(h) is an unrestricted revenue and is not part of the school's surcharge computation.
- (c) For profit-making schools, the allowable Federal, State and local income tax liability in N.J.A.C. 6A:23A-18.5(a)39 is computed using only the public school placement tuition income and all allowable and non-allowable approved private school for students with disabilities expenses that are allowable tax deductions on the school's Federal, State and local income tax returns.
- (d) Any gain or loss on the sale of fixed assets (except for buildings and/or land) or items originally purchased through funds charged in the certified actual cost per student shall be netted against or if applicable added to the total allowable costs to determine the certified actual cost per student.

6A:23A-18.7 Public school placement restricted working capital fund

- (a) For approved non-profit private schools for students with disabilities, the school's tuition rate may include an amount that will permit the school to establish a public school placement restricted working capital fund of up to 15 percent of the private school's allowable actual costs, for the 2006-2007 through 2007-2008 school year, but the private school shall not include an amount in excess of 2.5 percent of the private school's allowable actual costs per year.
- (b) Interest and/or dividends earned from the investment of tuition funds shall be netted against the school's total allowable costs incurred in account numbers classified as

undistributed expenditures—business and other support services when calculating the certified actual cost per student.

- (c) Any gain or loss on the sale of fixed assets (except for buildings and/or land) or items originally purchased through funds charged in the certified actual cost per student shall be netted against or, if applicable, added the total allowable costs to determine the certified actual cost per student.
- (d) Interest earned in accordance with N.J.A.C. 6A:23A-18.2(h) is unrestricted revenue and is not part of the school's public school placement restricted working capital fund computation.

6A:23A-18.8 Calculation of student attendance

- (a) Each approved private school for students with disabilities shall maintain a school register in accordance with N.J.A.C. 6A:32-8, to record all student attendance.
- (b) Each approved private school for students with disabilities shall submit to the Commissioner by September 1 verification of the average daily enrollment for the previous school year on forms provided by the Department.
- (c) Each approved private school for students with disabilities shall identify private placements in the register.
- (d) Each approved private school for students with disabilities shall maintain a separate register by class type.

6A:23A-18.9 Audit requirements

- (a) Regardless of the fiscal year of the school, each approved private school for students with disabilities shall submit to the Commissioner audited financial statements based on the

July 1 to June 30 school year which must be postmarked on or before November 1 or the following business day if November 1 falls on a weekend or holiday.

1. The approved private school for students with disabilities shall engage only an independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey to conduct the annual audit, who holds a valid registration license as a public school accountant of New Jersey. The approved private school for students with disabilities shall ensure the independent status of the auditor in accordance with standards set forth in the Code of Professional Ethics issued by, and available from, the American Institute of Certified Public Accountants (AICPA). Additionally, upon review by the Department, an accountant shall not be considered independent, if such accountant or members of his or her firm are engaged to perform services other than the year-end audit and tax return functions for the approved private school for students with disabilities.
- (b) The audit shall follow generally accepted auditing standards (GAAS), as set forth in the Codification of Statements on Auditing Standards, 1993, published for the American Institute of Certified Public Accountants, (1211 Avenue of the Americas, NYC, NY 10036-8775), incorporated herein by reference, as amended and supplemented and when applicable, OMB Circular A-133 or NJOMB Circular Letter 98-07 as amended and supplemented. The approved private school for students with disabilities shall ensure the use of the auditing guidelines as published and distributed by the Commissioner.
 1. The approved private school for students with disabilities shall ensure that the audit includes basic financial statements, required supplementary information, schedules and narrative explanations.
- (c) The approved private school for students with disabilities shall ensure that the audited financial statements reflect the certified actual cost(s) per student as determined by the

independent auditor and final tuition rate(s) charged at the end of the school year as determined by the school's management.

- (d) The approved private school for students with disabilities management representative(s) shall discuss with the auditor the results of the auditor's determination of the certified actual cost per student in order for management to determine the final tuition rate charged as a result of the audit.
 - 1. The approved private school for students with disabilities shall charge as the final tuition rate an amount equal to or less than the certified actual cost per student.
 - 2. The approved private school for students with disabilities shall ensure that the audit report contains a letter signed by both the school auditor and an authorized school representative indicating that both parties have met and discussed the audit, and that the determination of the final tuition rate charged was a management decision.
- (e) Within 60 days of receipt of the year-end audit, school management shall develop a corrective action plan pursuant to this subchapter in response to recommendations contained in the year-end audit, and shall submit such corrective action plan to the Assistant Commissioner, Division of Finance for review and approval.
- (f) The approved private school for students with disabilities shall not amend the final tuition rate charged after certification by the Commissioner.
- (g) Any adjustments that result from the certified audit or a tuition audit performed by the Commissioner that are in excess of \$10.00 per sending district board of education will be paid in accordance with N.J.A.C. 6A:23A-18.2(l) and (m).
- (h) An approved private school for students with disabilities that files an audit postmarked after November 1 shall cause the tentative tuition rate per student for the ensuing school year to be calculated based upon the audited actual cost per student for the school year two years prior to the current school year, and N.J.A.C. 6A:23A-18.2(j) will not apply.

- (i) Failure to comply with this section may result in the Commissioner placing the approved private school for students with disabilities on conditional approval status.
- (j) Upon request, the approved private school for students with disabilities shall submit to the Department a copy of the corporation's agency wide audited financial statements.

6A:23A-18.10 Appeals

- (a) The decision of the Assistant Commissioner, Division of Finance regarding the calculation of the tentative tuition rate pursuant to N.J.A.C. 6A:23A-18.2(j), regarding the approval of a tentative tuition rate pursuant to N.J.A.C. 6A:23A-18.3 and regarding conditional approval status pursuant to N.J.A.C. 6A:23A-18.9(i), may be appealed in accordance with N.J.A.C. 6A:3.
- (b) The decision of the Assistant Commissioner, Division of Finance in regard to certification may be appealed in accordance with N.J.A.C. 6A:3.
- (c) The decision of the Commissioner in regard to N.J.A.C. 6A:23A-18.3, New private schools for students with disabilities, may be appealed to the State Board of Education in accordance with N.J.S.A. 18A:6-27 and N.J.A.C. 6A:4.

6A:23A-18.11 Out-of-State approved private schools for students with disabilities

- (a) Out-of-State private schools for students with disabilities shall be approved to provide special education programs by the department of education of the state in which they are located. Exceptions to this requirement may be made only at the discretion of the Office of Special Education, New Jersey Department of Education in accordance with N.J.A.C. 6A:14-7.1(e).
- (b) The Commissioner shall abide by the tuition regulations for approved private schools for

students with disabilities adopted by the department of education or other regulatory agency in the state in which the private school for students with disabilities is located.

The approved private school for students with disabilities shall submit verification of the approval of the tuition rate to the Commissioner either on prescribed forms or verification from the out-of-State Department of education or other regulatory agency.

(c) If the out-of-State approved private school for students with disabilities is located in a state in which the department of education or other regulatory agency does not approve or sanction tuition rates, such tuition rates shall be determined in the following manner:

1. The approved private school for students with disabilities and the sending district board of education or state agency that determined the placement shall mutually agree to the tuition rate. The tuition rate shall be agreed upon prior to the child's placement, and a letter indicating agreement of such rate shall be forwarded to the Commissioner.
2. An approved private school for students with disabilities which is licensed as a child care facility by the New Jersey Department of Human Services shall determine a tuition rate through mutual agreement between the approved private school for students with disabilities, the sending district board of education and the Department of Human Services, Office of Education. The tuition rate shall be agreed upon prior to the child's placement and documentation of such rate shall be forwarded to the Commissioner.
3. If a tuition rate cannot be mutually agreed upon in accordance with (c)1 or 2 above, the approved private school for students with disabilities shall file a budget in a format prescribed by the Commissioner to determine a tentative tuition rate and shall comply with the provisions of this subchapter in order to collect tuition from a New Jersey district board of education or agency. The cost of the audit contained in N.J.A.C. 6A:23A-18.9 may be charged to the sending district board

of education or agency that did not mutually agree to the tuition rate.

6A:23A-18.12 Inspection of records

- (a) All financial and accounting records maintained by the approved private school for students with disabilities, as required by this subchapter, shall be open during normal business hours for review and audit by the Commissioner or his or her representative(s) for the period indicated in N.J.A.C. 6A:23A-18.4(a)20.
- (b) All financial and accounting records maintained by a related party which pertain to a transaction between a related party and the approved private school for students with disabilities shall be open during normal business hours for review and audit by the Commissioner or his or her representative(s) for the period indicated in N.J.A.C. 6A:23A-18.4(a)20.
- (c) All auditor's workpapers used in the preparation of the year-end audited financial statements shall be open during normal business hours for review by the Commissioner or his or her representative(s) for the period indicated in N.J.A.C. 6A:23A-18.4(a)20.

6A:23A-18.13 Fiscal monitoring of approved private schools for students with disabilities and corrective action plans

- (a) The Commissioner or his or her representative(s) shall monitor approved private schools for students with disabilities in accordance with this subchapter. On site monitoring shall be conducted at least every six years.
- (b) The monitoring process may include, but is not limited to, all financial information required in this subchapter.
- (c) After the monitoring process is completed, a report shall be written and sent to the

approved private school for students with disabilities, the county superintendent and the school's auditor.

- (d) If the school receives a final report that indicates noncompliance, a corrective action plan shall be developed and submitted to the Department for approval.
- (e) The corrective action plan shall include, but is not limited to, the following:
 - 1. Objective and strategies for correcting each noncompliance item; and
 - 2. The dates by which noncompliance will be corrected.
- (f) When an approved private school for students with disabilities is determined to be in noncompliance, the Commissioner may:
 - 1. Issue a conditional approval status when noncompliance with State rules and/or implementation of the corrective action plan is demonstrated; or
 - 2. Immediately remove program approval when it is documented that the health, safety or welfare of the students is in danger.
- (g) The actions of the Commissioner may be appealed according to N.J.A.C. 6A:3.
- (h) Annually, the Department shall publish the results of the on-site fiscal monitoring of private schools for students with disabilities.

6A:23A-18.14 Fiscal information

- (a) Annually, each approved private school for students with disabilities shall submit information to the Assistant Commissioner, Division of Finance including, but not limited to:
 - 1. Fiscal and program information, including:
 - i. The number of students served;
 - ii. The number of and types of class types;
 - iii. Number of schools days; and

- iv. The daily hours in session;
 2. Staffing information, including:
 - i. A staff roster, including, but not limited to, names, job titles, salaries, hours worked, certification(s), degree(s) and license(s) held;
 3. An affidavit that the program meets the standards of, and is conducted in full compliance with, the Individuals with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and Title II and III of the Americans with Disabilities Act, P.L. 101-336, N.J.S.A. 18A:46-1 et seq., this subchapter, and N.J.A.C. 6A:14; and
 4. An affidavit that the owners/operators of the program are aware of the non-allowable costs contained in N.J.A.C. 6A:23A-18.5 and that such costs charged as allowable costs in the private school for students with disabilities tuition rate are consistent with the individualized education program of a disabled student and shall be reasonable, that is, ordinary and necessary and not in excess of the cost which would be incurred by an ordinarily prudent person in the administration of public funds.
- (b) Annually, the Department shall publish a Private School for Students with Disabilities Comparative Spending Guide.
 - (c) An approved private school for students with disabilities shall have a copy of the board of director's minutes, or for a partnership, the minutes of the partners meetings available upon request by the Department.

6A:23A-18.15 Failure to comply with Department directives

The Department may place an approved private school for students with disabilities on conditional approval status when the school fails to comply with Department directives, such as,

but not limited to, failure to refund tuition funds as a result of a Department tuition audit.

6A:23A-18.16 Sale of assets of an approved private school for students with disabilities

In the event of the sale of the assets from one approved private school for students with disabilities to either a new approved private school for students with disabilities or an existing approved private school for students with disabilities, the selling school must provide the Department with a copy of the sale agreement, copy of the allocation of purchase price as defined in Section 1060 of the Internal Revenue Code (Internal Revenue Service Form 8594) and the selling school must provide a final financial report within 90 days of the sale showing the disposition of its assets and any corresponding refunds to the sending districts based on the sale of assets (books, supplies, desks, computers, equipment under \$2,000, depreciable equipment, etc) other than Class VI or VII as defined in the IRC cited above (goodwill, going concern, etc).

SUBCHAPTER 19. EMERGENCY STATE AID AND RESIDENCY DETERMINATION

6A:23A-19.1 Emergency aid

- (a) For the purposes of this subchapter, a district board of education does not include an educational services commission or jointure commission.
- (b) A district board of education may request emergency aid pursuant to N.J.S.A. 18A:58-11 as follows:
 - 1. The district board of education shall submit to the executive county superintendent as follows:
 - i. A resolution that indicates the specific requested amount of emergency aid and identifies the emergency condition that exists within the school

district;

- ii. A detailed statement about the emergency condition, which indicates the reason why the condition was unforeseeable and/or why the costs associated with the condition were unforeseeable;
- iii. The board secretary's latest monthly financial report, accompanied by a statement showing the projected [end of the year] **end-of-the-year** general fund free balance[,]
and a detailed accounting of how the emergency aid will be expended; and
- iv. A statement included in the board's minutes that no other funds can be reallocated within the existing budget for the emergency condition without adversely impacting the district board of education's ability to meet the New Jersey Student Learning Standards.

2. The district board of education shall separately account for disbursements against emergency aid funds in its general fund accounting records.

- (c) The executive county superintendent may request additional documentation as deemed necessary to support a district board of education's request for emergency aid.
- (d) The executive county superintendent shall submit a recommendation regarding a request for emergency aid and all of the information submitted by the district board of education making the request to the [Division] **Office of School Facilities and Finance** to determine whether to recommend to the Commissioner that a request be sent to the State Board of Education for approval.

1. In determining whether a recommendation for emergency aid will be sent to the State Board of Education, the Department will consider the extent the district board of education budgeted an adequate level of surplus for unexpected expenditures.

2. If the district board of education did not budget an adequate level of surplus, the

Department will not recommend the emergency aid request.

- (e) The State Board of Education will review any emergency aid requests that have been recommended and will fully approve, partially approve, conditionally approve, or deny an emergency aid request.

6A:23A-19.2 Method of determining the district of residence

- (a) The district of residence for school funding purposes shall be determined according to the following criteria:
 - 1. The "present district of residence" of a child in a residential [state] **State** facility, defined in N.J.S.A. 18A:7F-45 and referred to in the first paragraph of N.J.S.A. 18A:7B-[12b]**12.b**, means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day prior to October 16.
 - 2. The "present district of residence" of a child placed by a State agency in a group home, skill development home, approved private school for students with disabilities or out-of-State facility, also referred to in [the first paragraph of] N.J.S.A. 18A:7B-[12b]**12.b** means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the date of the child's most recent placement by the State agency. In subsequent school years spent in the educational placement made by a State agency, the child's "present district of residence" shall be determined in the same manner as for a child in a residential State facility as set forth in (a)1 above.
 - 3. If the State becomes the child's legal guardian after the date of the child's initial placement by a State agency, the State will assume financial responsibility for the child's educational costs in subsequent school years.
- (b) The "present district of residence" or "district of residence" referred to in N.J.S.A.

18A:7B-[12b]**12.b** shall be determined by the Commissioner or his or her designee based upon the address submitted by the Department of Corrections, the Department of [Human Services] **Children and Families**, or the Juvenile Justice Commission on forms prepared by the Department of Education.

- (c) The district board of education shall be notified by the Department of the determination of the district of residence. In order to prevent a lapse in the child's education and/or child study services, the district board of education shall be bound by such determination unless and until it is reversed on redetermination or appeal pursuant to the provisions of (e) and (f) below.
- (d) A district board of education contesting the Department's determination of district of residence shall submit a written notification of a dispute to the [Division] **Office of School Facilities and Finance**[,] within 30 days of the receipt of a final notice that a child was determined to be a resident of the district for purposes of State funding. As part of this written notice, the following information shall be submitted:
 - 1. A written statement detailing the effort of the district board of education to verify the determination of the Department]
 - 2. Written rationale for rejecting the determination of the Department; and
 - 3. Any additional information the district board of education has obtained [which] **that** might enable redetermination of the district of residence.
- (e) The [Division] **Office of School Facilities and Finance** shall attempt to resolve the dispute administratively and shall notify the district board of education whether a redetermination of district of residence [shall] **will** be made within 90 days of the receipt of [the] written notification that a dispute exists.
- (f) A district board of education may initiate a formal proceeding before the Commissioner to resolve such a dispute if the [Division] **Office of School Facilities and Finance** is unable to resolve a dispute within the 90-day time limit, by filing a Petition of Appeal

with the Commissioner pursuant to the provisions of N.J.A.C. 6A:3, Controversies and Disputes.

- (g) As prescribed by N.J.S.A. 18A:7B-12, the "district of residence" for a homeless child whose parent(s) or guardian(s) temporarily moves from one **school** district [board of education] to another is the district in which the parent(s) or guardian(s) last resided prior to becoming homeless. This district shall be designated as the district of residence for as long as the parent(s) or guardian(s) remains homeless.

6A:23A-19.3 Address submission for determining the district of residence

- (a) The address submitted to the Department for determining the district of residence for school funding purposes for a child described below shall be the address defined below:
 - 1. If the State has custody of the child or if a court or the State has appointed a third party as the custodian of the child, the present address of the parent(s) or guardian(s) with whom the child resided immediately prior to his or her most recent admission to a State facility or placement by a State agency shall be submitted. If the child resides in a resource family home, the present address of the resource family parent(s) shall be submitted pursuant to N.J.S.A. 18A:7B-12.
 - 2. If the child's parents are divorced with joint guardianship, the present address of the individual parent with whom the child resided as of the date required by N.J.A.C. 6A:23A-19.2(a)1 or 2 shall be submitted.
 - 3. If the child's parents are divorced with joint guardianship and the child resides with each parent equally, the present address of both the child's father and mother as of the date required by N.J.A.C. 6A:23A-19.2(a)1 or 2 shall be submitted.
 - 4. If the child's sole parent or legal guardian resides in a State facility, the State will assume financial responsibility for the child's educational costs until such time as

the parent or guardian no longer resides in the State facility.

5. If the child resides in a non-resource family home with a relative for less than one year immediately prior to the child's most recent admission to a State facility or most recent placement by a State agency, the present address of the child's parent(s) or guardian(s) at the time this placement is submitted.
6. If the child resides in a non-resource family home with a relative pursuant to N.J.S.A. 18A:38-[1d]1.d for one or more years immediately prior to the child's most recent admission to a State facility or most recent placement by a State agency, the present address of the child's relative(s) at the time of this placement is submitted.
7. If the child is age 18 or older[,] or has been legally emancipated; and has lived on his or her own before the initial placement, the present address of the child as of the date required by N.J.A.C. 6A:23A-19.2(a)1 or 2 is submitted.

SUBCHAPTER 20. PURCHASE AND LOAN OF TEXTBOOKS

6A:23A-20.1 Eligibility

- (a) For the purposes of this subchapter, a district board of education does not include an educational services commission or jointure commission.
- (b) N.J.S.A. 18A:58-37.1 et seq. requires each district board of education in which a nonpublic school is located, to purchase and to loan, without charge, upon individual requests, textbooks to students in the nonpublic school or schools located within the school district when such students are residents of the State.
- (c) Children who are enrolled in a nonpublic school whose parents or legal guardians do not maintain a residence in this State are not eligible to receive such textbooks. Children who

are enrolled in a nonpublic school whose tuition is paid by a district board of education are not eligible to receive such textbooks.

6A:23A-20.2 Responsibility of the district board of education

A district board of education shall distribute to all students on an equitable basis existing book stocks and newly purchased textbooks purchased pursuant to N.J.S.A. 18A:58-37.1 et seq. A district board of education shall not discriminate against students in either public or nonpublic schools.

6A:23A-20.3 Individual requests

- (a) Individual written requests signed by the parent(s) or legal guardian(s) of nonpublic school students for the loan of textbooks are addressed to the district board of education in which the nonpublic school is located.
- (b) Individual requests are submitted directly to the district board of education in which the nonpublic school is located or to the nonpublic school. In the latter case, the nonpublic school official shall forward such requests collectively to the district board of education.
- (c) Individual requests are due on or before March 1 preceding the school year.
- (d) A district board of education shall purchase textbooks in accordance with district board of education policy and purchasing practices.
- (e) Students attending public schools are not required to submit such requests.

6A:23A-20.4 Ownership and storage of textbooks

- (a) All textbooks purchased under the provisions of N.J.S.A. 18A:58-37.1 et seq. remain the

property of the district board of education, which shall indicate such ownership in each book by a label.

- (b) The district board of education shall be responsible for the receipt of the textbooks from the vendor and inventory of such textbooks.
- (c) The district board of education may require that the textbooks be returned to the district board of education at the end of the school year, or may enter into agreements with the nonpublic schools to store such books. In the event of such an agreement, the district board of education shall not pay storage charges of any kind to a nonpublic school for this service.

6A:23A-20.5 Accounting entries

- (a) Expenditures for the purchase of textbooks may include the cost of freight or postage for transporting such books from the vendor to the district board of education.
- (b) The district board of education shall enter the cost of textbooks for students enrolled in the public schools in the general current expense fund in the account designated in the minimum chart of accounts.
- (c) The district board of education shall enter the cost of textbooks for nonpublic school students in the special revenue fund in the account designated in the minimum chart of accounts. The district board of education shall record State aid received pursuant to N.J.S.A. 18A:58-37.1 et seq. separately in the special revenue fund as State aid.

6A:23A-20.6 Charge for textbook loss or damage

- (a) Each district board of education shall make reasonable rules and regulations governing the loan of textbooks, which may contain requirements for reimbursement by students to

the district board of education for damage, loss, or destruction of the loaned textbooks.

- (b) Such rules and regulations are applicable to both public and nonpublic school students.

SUBCHAPTER 21. MANAGEMENT OF PUBLIC SCHOOL CONTRACTS

6A:23A-21.1 Change orders and open-end contracts

- (a) Changes in quantities, work performed, services rendered, materials, supplies, or equipment delivered or provided shall not be authorized, permitted, or accepted, except by the procedures established in this section. All change orders are subject to N.J.A.C. 5:30-11 as applicable, and the following:
 - 1. Each change order shall be in writing and shall be numbered consecutively (beginning with the number one) for each project or contract;
 - 2. Change orders [which] **that** result in payment reduction below the originally contracted price may be made by locally established procedure, provided that any change orders increasing costs on the same contract shall include reference to such reductions;
 - 3. Quantities of items or work shall not be changed in such a manner as to nullify the effect of the competitive determination of lowest responsible price [which] **that** was made at the time of contract award, provided that at said time the changes could have been reasonably foreseen; and
 - 4. Responsibility required by this section to be exercised specifically by the district board of education or charter board of trustees may not be delegated. In those instances in which authority is to be exercised by [some] **a** school official, the authority, responsibility, and required procedures should be clearly spelled out in advance, by resolution.

- (b) Orders placed under open-end contracts are not considered change orders for purposes of this section.
- (c) Change orders for capital project contracts are governed by N.J.A.C. 6A:26-4.9.
- (d) Change orders for contracts for materials, supplies, and equipment that are not part **of** a capital project contract are governed by the following:
 - 1. Change orders may be used to change the number of units or items originally advertised and contracted **ed** for, provided [that]:
 - i. Unit prices were sought at the time of advertising and included in the contract; and
 - ii. The advertising and the contract included a provision that the unit prices could be so used.
 - 2. Change orders may not be used to substantially change the quality or character of the items to be provided, inasmuch as such factors would have been a factor in the original bidding.
 - 3. Such changes shall not cause the originally awarded contract price to be exceed cumulatively by more than 20 percent net.
 - 4. Availability of funds shall be certified by the school business administrator/board secretary prior to authorizing any change orders that increase costs.
 - 5. Changes may be effectuated by the school official authorized to serve as purchasing agent, subject to such contracts or approval requirements as the district board of education or charter school board of trustees may lawfully impose.
 - 6. Change orders may be authorized by the purchasing agent for price adjustment for petroleum products, provided:
 - i. There has been a determination by the school board attorney that such a price adjustment is authorized by law;
 - ii. [That the] **The** original bidding specifications and contract so authorize;

- iii. [That an] **An** objective price benchmark not under the direct control of the supplier is utilized to establish the price changes, and [that] the changes are not for the purpose of correcting asserted bidding errors; and
 - iv. [That adequate] **Adequate** funds have been certified as being available.
- (e) Change order for professional and extraordinary unspecified services (EUS) contracts are governed by the following:
 - 1. Changes shall be within the scope of activities of the original contract, and not for the purpose of undertaking new or different work or projects. Changes in payments for activities within the scope of activities of the contract shall be in accordance with a schedule of specific charges or rates contained in the contract and shall be effectuated by a written change order authorized by the appropriate school official. If such a schedule is not included in the contract, the contract shall be amended to provide for same.
 - 2. If the change is not within the scope of activities of the original contract:
 - i. If the contract was awarded without competitive bidding being required by law or rule (as in the case for professional services and certain authorized extraordinary, unspecifiable services per N.J.S.A. 18A:18A-[5a(2)]**5.a(2))**, any change beyond the original scope of activities may be made by amendatory contract; and
 - ii. If the consulting contract was not a professional service and was required to be subject to competitive bidding, any change beyond the original scope of activity shall be by new contract based on new bidding.
 - 3. The school business administrator/board secretary shall certify the availability of funds and that all required approvals have been received pursuant to N.J.A.C. 6A:23A-13 prior to authorizing any change order that increases costs.
 - 4. An amendatory contract may be effectuated by the same method required for the

authorization of the original contract.

(f) The issuance of purchase orders pursuant to an open-end contract is considered to be the carrying out of the contract and not a change order. The following requirements apply:

1. A district board of education or charter school board of trustees shall not use orders under open-end contracts for purposes such as changing the quality or character of items to be provided, [nor to] **or** exceed the maximum number(s) of items or units provided for in the original specifications and contract. Such changes would constitute a change order;
2. The district board of education or charter school board of trustees shall execute such contract for a period not to exceed the requirements of N.J.S.A. 18A:18A-1 et seq., the Public School Contracts Law, unless specifically authorized by law;
3. The district board of education or charter school board of trustees shall execute a certificate of availability of funds each time an order is placed covering the amount of the order, unless the district board of education or charter school board of trustees wishes to commit and certify the full amount of the open-end contract at the outset. The certificate must be executed before the district board of education or charter school board of trustees incurs a contractual liability on its part; and
4. The school official authorized to serve as purchasing agent pursuant to N.J.S.A. 18A:18A-2 shall place such orders subject to such controls or approval requirements as the district board of education or charter school board of trustees may lawfully impose.

6A:23A-21.2 Acceptance of bonds under the Public School Contracts Law

(a) A district board of education or charter school board of trustees may require the

following bonds, as authorized by N.J.S.A. 18A:18A-23 to 25:

1. A performance bond;
 2. A bid bond; and/or
 3. A labor and material bond.
- (b) A district board of education or charter school board of trustees may require in the notice to bidders or in the specifications that bidders guarantee [that] they will enter into a contract with the district board of education or charter school board of trustees and will furnish any prescribed performance bond or other security required as a guarantee or indemnification. The guarantee may be given, at the option of the bidder, by certified check, cashier's check, or bid bond. When the guarantee is given in the form of a bid bond, the district board of education or charter school board of trustees shall ensure that such bid bond:
1. Be given by a responsible surety or insurance company licensed to operate in New Jersey. A district board of education or charter school board of trustees is prohibited from requiring that bidders submit a bid bond from a particular surety or insurance company; or
 2. Be given by a responsible individual residing in New Jersey. The district board of education or charter school board of trustees may reject such individual bid bond if [it is] not satisfied with the sufficiency of the individual surety offered.
- (c) The district board of education or charter school board of trustees shall ensure that the bond is in the form of a certificate, identifying the bidder whose acts are guaranteed, the name of the surety company, insurance company or individual surety, and the district board of education or charter school board of trustees in whose favor the bonds are given.
- (d) The district board of education or charter school board of trustees shall ensure that the "penalty" or "penal sum" on performance bonds, labor and material bonds, and all other such bonds is expressed in words and figures as a specific number of dollars and not as a

percentage of the bid.

- (e) The district board of education or charter school board of trustees shall ensure that the "penalty" or "penal sum" on performance and labor and material bonds is in the amount of 100 percent of the contract price.

6A:23A-21.3 Public sale of bonds

- (a) A district board of education may accept a financial surety bond in lieu of a certified, cashier's, or treasurer's check as a bid deposit pursuant to N.J.S.A. 18A:24-41.a, and in accordance with the rule adopted by the Local Finance Board at N.J.A.C. 5:30-2.10.
- (b) A district board of education may choose to conduct the public sale of bonds through the submission of electronic bids or proposals, as authorized at N.J.S.A. 18A:24-36.a, and in accordance with the rules adopted by the Department of Community Affairs at N.J.A.C. [5:32-9 and 10] **5:30-2.9 and 2.10**.

6A:23A-21.4 Contracts for behind-the-wheel driver education

- (a) A district board of education or charter school board of trustees shall negotiate or award by resolution at a public meeting contracts with private driver education schools providing behind-the-wheel driver education for any term not exceeding in the aggregate three years, pursuant to N.J.S.A. 18A:18A-42.i, without public advertising for bids. The district board of education or charter school board of trustees shall indicate in such resolution [that] the private driver education school is required to provide behind-the-wheel driver education that is substantially equivalent to that provided by the district board of education or charter school board of trustees at less cost than current or other proposed programs.

- (b) A district board of education or charter school board of trustees shall negotiate or award such contracts with approved private driver education schools. A driver education school holding a current license or certificate of approval issued by the Chief Administrator of the Motor Vehicle Commission is considered approved by the Commissioner of Education for the purpose of providing behind-the-wheel driver education. The district board of education or charter school board of trustees shall obtain from the private driver education school a copy of such current license or certificate of approval and maintain the copy on file with the contract.

6A:23A-21.5 Joint purchasing systems

A district board of education or charter school board of trustees may by resolution establish joint purchasing systems pursuant to N.J.S.A. 40A:11-11. Such joint purchasing system is effective only upon approval of the Director of the Division of Local Government Services in the Department of Community Affairs.

6A:23A-21.6 Multi-year leasing

A district board of education or charter school board of trustees shall execute multi-year leases only as authorized by the Public School Contracts Law at N.J.S.A. 18A:18A-[42f]**42.f** and **18A:20-4.2(f) and** in accordance with rules promulgated by the Department of Community Affairs at N.J.A.C. 5:34-3.

SUBCHAPTER 22. FINANCIAL OPERATIONS OF CHARTER SCHOOLS

6A:23A-22.1 Definitions

The words and terms as used in this subchapter are defined in N.J.A.C. 6A:23A-15.1.

6A:23A-22.2 Bookkeeping and accounting for charter schools

A charter school board of trustees shall comply with GAAP and other requirements and provisions as set forth in N.J.A.C. 6A:23A-16.

6A:23A-22.3 Certification

A charter school board of trustees shall employ or contract with a person who holds a New Jersey standard or provisional school business administrator certificate in accordance with N.J.A.C. 6A:9B-[11.7]**12.7** to oversee fiscal operations of the charter school.

6A:23A-22.4 Financial requirements

- (a) A charter school board of trustees may incur debt for a period no greater than 12 months except:
 - 1. During the first year [that] the charter school is approved when the debt is incurred by the charter school board of trustees for a period no longer than January 15 of the preceding school year to June 30 of the first school year of the charter; and
 - 2. For all other years [that] the charter school is approved when the debt incurred by the charter school board of trustees for a period of 12 months or greater is:
 - i. Fully secured by the value of the real property or other asset, so [that] the total value of all such debt does not exceed the total appraised value of the

property or asset by which the debt is secured; and

ii. Non-recourse to the charter school.

- (b) A charter school board of trustees may acquire real property by a lease or a lease with an option to purchase for use as a school facility providing that the charter school board of trustees shall ensure:
1. The term of the lease does not exceed the length of the charter;
 2. The lease contains a provision terminating the obligation to pay rent upon the denial, revocation, non-renewal, or surrender of the charter; and
 3. The lease does not contain a provision accelerating the obligation to pay rent in the event of default.
- (c) A district board of education shall [only] transmit State and local public funds to a charter school **only** after the final granting of the charter by the Commissioner has occurred. If funds are withheld pending the final granting of the charter, the district board of education shall pay all withheld funds to the charter school with the first scheduled payment after the effective date of the charter.
- (d) A charter school shall be subject to monitoring by the Commissioner to ensure [that] the percentage of school funds spent in the classroom is at least comparable to the average percentage of school funds spent in the classroom in all other public schools in the State. The calculation for this percentage in both the annual budget and the Comprehensive Annual Financial Report is based on National Center for Educational Statistics as published by the U.S. Department of Education.
- (e) If, at any time, the Commissioner denies, revokes, or does not renew a school's charter, or a charter school board of trustees surrenders its charter or becomes insolvent, all assets of the charter school board of trustees, after satisfaction of all outstanding claims by creditors, are subject to equitable distribution by the Commissioner among the participating district of residence and non-resident district(s). A charter school board of

trustees shall include a provision in its bylaws concerning distribution of assets upon denial, revocation, non-renewal, or surrender of its charter or insolvency of the charter school that is consistent with this rule.

6A:23A-22.5 Public school contract law

- (a) A charter school board of trustees shall be subject to the provisions of the public school contracts law, N.J.S.A. 18A:18A-1 et seq.
- (b) Any agency, corporation, person, or entity [which] **that** enters into a contract or agreement on behalf of [the] **a** charter school to provide administrative, educational, or other services shall be subject to the provisions of the public school contract law, N.J.S.A. 18A:18A-1 et seq.

6A:23A-22.6 Public relations and professional services; board policies; efficiency

- (a) Each charter school board shall establish by policy or policies a strategy or strategies in order to minimize the cost of public relations, as defined in N.J.A.C. 6A:23A-9.3(c)14, and professional services. The policy or policies shall include, to the extent practicable and cost effective, but need not be limited to, the following provisions:
 - 1. A maximum dollar limit, established annually prior to budget preparation, for public relations, as defined in N.J.A.C. 6A:23A-9.3(c)14, and each type of professional service, with appropriate notification to the board of trustees if it becomes necessary to exceed the maximum. Upon such notification, the board of trustees may adopt a dollar increase in the maximum amount through formal board action;
 - 2. Establishment of procedures to ensure the prudent use of legal services by

employees and board of trustees['] members and the tracking of the use of those services;

3. Charter schools with legal costs that exceed 130 percent of the Statewide average charter school per pupil amount should establish the following procedures and, if not established, provide evidence that such procedures would not result in a reduction of costs:
 - i. A limitation on the number of contact persons with the authority to request services or advice from contracted legal counsel;
 - ii. Criteria or guidance to prevent the use of legal counsel unnecessarily for management decisions or readily available information contained in charter school materials such as policies, administrative regulations, or guidance available through professional source materials;
 - iii. A provision that requests for legal advice shall be made in writing and shall be maintained on file in the business office and a process to determine whether the request warrants legal advice or if legal advice is necessary; and
 - iv. A provision to maintain a log of all legal counsel contact, including name of legal counsel contacted, date of contact, issue discussed, and length of contact. Legal bills shall be compared to the contact log and any variances shall be investigated and resolved;
4. A provision that requires that contracts for legal services comply with payment requirements and restrictions pursuant to N.J.S.A. 18A:19-1 et seq. and as follows:
 - i. Advance payments shall be prohibited;
 - ii. Services to be provided shall be described in detail in the contract;
 - iii. Invoices for payment shall itemize the services provided for the billing

period; and

- iv. Payment shall [only] be **only** for services actually provided;
- 5. Professional services contracts are issued in a deliberative and efficient manner that ensures the charter school receives the highest quality services at a fair and competitive price or through a shared service arrangement. This may include, but is not limited to, issuance of such contracts through a request for proposals (RFP) based on cost and other specified factors or other comparable process; and
- 6. Professional services contracts are limited to non-recurring or specialized work for which the charter school does not possess adequate in-house resources or in-house expertise to conduct.
 - i. Charter schools are prohibited from contracting with legal counsel or using in-house legal counsel to pursue any affirmative claim or cause of action on behalf of charter school administrators and/or any individual board members for any claim or cause of action in which the damages to be awarded would benefit an individual rather than the charter school as a whole.
 - ii. Charter school publications shall be produced and distributed in the most cost-efficient manner possible that will enable the charter school to inform and educate the target community. The use of expensive materials or production techniques where lower cost methods are available and appropriate, such as the use of multi-color glossy publications instead of suitable, less expensive alternatives, is prohibited.
 - iii. Public relations activities, such as booths at Statewide conferences, marketing activities and celebrations for opening schools and community events, and TV productions that are not part of the instructional program or do not provide, in a cost-effective way, information about charter

school or board operations to the public, that are excessive in nature are prohibited. All activities involving promotional efforts to advance a particular position on elections or any referenda are prohibited.

- iv. Nothing in this section shall preclude boards of trustees from accepting donations or volunteer services from community members, local private education foundations, and local business owners to conduct or assist in public relations services. Examples include, but are not limited to:
 - (1) Providing charter school flyers, newsletters, or other materials containing charter school related information of public concern to local businesses, public meeting places, or other local organizations to display or make available for dissemination;
 - (2) Making charter school related information of public concern available to local newspapers to publish related articles; and
 - (3) Utilizing volunteered services of local community members, charter school employees, members of parent organizations, or local businesses with expertise in related areas such as printing, advertising, publishing, or journalism.

6A:23A-22.7 Charter school response to Office of Fiscal Accountability and Compliance (OFAC) investigation report

- (a) Any charter school that has been subject to an audit or investigation by the Department's Office of Fiscal Accountability and Compliance (OFAC) shall discuss the findings of the audit or investigation at a public meeting of the charter school board of trustees no later than 30 days after receipt of the findings.

- (b) Within 30 days of the public meeting required in (a) above, the charter school board of trustees shall adopt a resolution certifying that the findings were discussed in a public board meeting and approving a corrective action plan to address the issues raised in the findings. This resolution shall be submitted to OFAC within 10 days of adoption by the board of trustees.

6A:23A-22.8 Verification of payroll check distribution

- (a) [Beginning with the 2009-2010 school year, at] **At** least once every three years[,] between the months of September through May, charter schools shall require each charter school employee to report to a central location(s) and produce picture identification and sign for release of his or her paycheck or direct deposit voucher. The [district] **charter school** may exclude per diem substitutes from the required verification.
- (b) Picture identification shall be in the form of a charter school issued identification card, valid drivers' license, official passport, or other picture identification issued by a state, county, or other local government agency.
- (c) The chief school administrator/lead person shall designate an appropriately qualified staff member to match the picture identification to the employee roster maintained by the office of personnel or human resources prior to release of the pay check or direct deposit voucher.
- (d) Where no appropriate identification can be produced, the school business administrator shall withhold paychecks or stop direct deposits until such time that the payee/charter school employee can produce appropriate identification or until an investigation and corrective action is concluded, as appropriate to the circumstances.
- (e) Upon completion of the payroll check distribution verification procedures set forth in this section, the chief school administrator/lead person shall submit a certification of

compliance, in a form prescribed by the Department, to the executive county superintendent. Verification of the charter school's compliance with the provisions of this section will be required as part of the annual audit.

6A:23A-22.9 Board of trustees expenditures for non-employee activities, meals, and refreshments

- (a) The following words and terms used in this section shall have the following meanings, unless the context clearly indicates otherwise:
 - 1. “Activities” means events or functions provided or held for the benefit of students, dignitaries, and other “non-charter school” employees (for example, parents) [which] **that** are paid from public funds.
 - 2. “Dignitary” means a notable or prominent public figure; a [high level] **high-level** official; or one who holds a position of honor. A dignitary, for purposes of this section, is not a charter school employee or board of trustees member.
- (b) Allowable expenditures for non-employee charter school board of trustees activities shall include:
 - 1. All reasonable costs, including light meals and refreshments, directly related to activities that benefit students and are part of the instructional program, including expenditures for field trips and extracurricular programs that are not solely for entertainment. Nothing in this subsection shall preclude boards of trustees from using student activity funds or accepting donations to support student activities that are solely for student entertainment;
 - 2. All reasonable costs directly related to activities of dignitaries and other “non-charter school” employees (for example, parents), including light meals, [and] refreshments, and any other directly related expense. It is expected that

expenditures for this purpose will be minimal and infrequent;

3. All reasonable costs of commencement and convocation activities for students;
and
 4. Expenditures related to charter school employees to the extent such employees are essential to the conduct of the activity.
- (c) A charter school board shall, at a minimum, take actions regarding student activities as follows:
1. Pre-approve field trip destinations;
 2. Establish dollar thresholds for awards to recognize special accomplishments; and
 3. Establish a budget supported by general fund revenues for each category of activity in a non-discriminatory manner (for example, football, boys soccer, girls soccer, photography club). Student activity funds are excluded.
- (d) Pursuant to N.J.S.A. 18A:11-12 and [State of] New Jersey Department of **the** Treasury, Office of Management and Budget Circular [08-19-OMB] **16-11-OMB, Travel Regulations**, and [06-14-OMB] **11-09-OMB, Entertainment, Meals, and Refreshments**, the following costs shall not be permitted using public funding:
1. Receptions, dinners, or other social functions held for or honoring any employee or group of employees of the charter school (for example, breakfast, luncheon, dinner, or reception for retirees or award recipients). This does not prohibit [districts] **charter schools** from honoring employees without a social function or using public funds to support reasonable costs of employee recognition awards (for example, [teach] **teacher** of the year awards, years of service awards). Use of public funds for reasonable costs of employee awards is a local discretionary expenditure;
 2. Meals or refreshments served to guests at any athletic event or other games or contests; and

3. Expenses for alcoholic beverages.
- (e) Documentation required to support activities, meals, and refreshments at charter school events shall be:
1. A description of the activity;
 2. The purpose/justification of the activity, expressed in terms of the goal(s) or objective(s) of the charter school;
 3. The make-up of the group participating in the activity; and
 4. The names and titles of board members or employees included in the group.

6A:23A-22.10 Nepotism policy

- (a) As a condition of receiving charter school aid, charter school board of trustees shall implement the nepotism policy established by this subsection [by January 20, 2010]. The nepotism policy shall include the following:
1. A definition of "relative" that is consistent with N.J.S.A. 52:13D-21.2 and N.J.A.C. 6A:23A-1.2 and a definition of "immediate family member" that is consistent with N.J.S.A. 52:13D-13 and N.J.A.C. 6A:23A-1.2;
 2. A provision prohibiting any relative of a board member, lead person, or chief school administrator from being employed in an office or position in [that] **the** charter school except that a person employed or to be promoted by the charter school on the effective date of the policy or the date a relative becomes a board member or chief school administrator shall not be prohibited from continuing to be employed or to be promoted in the school, and a charter school may employ a relative of a board member, lead person, or chief school administrator provided [that] the charter school has obtained approval from the executive county superintendent of schools. Such approval shall be granted only upon

demonstration by the [school district] **charter school** that it conducted a thorough search for candidates and [that] the proposed candidate is the only qualified and available person for the position;

3. A provision prohibiting the chief school administrator/lead person from recommending to the board, pursuant to N.J.S.A. 18A:12-[21-]**21 through 34**, any relative of a board member or chief school administrator/lead person unless the person is subject to the exception of (a)2 above;
4. A provision prohibiting a charter school administrator from exercising direct or indirect authority, supervision, or control[,] over a relative of the administrator. Where it is not feasible to eliminate such a direct or indirect supervisory relationship, appropriate screens and/or alternative supervision and reporting mechanisms must be in place;
5. A provision prohibiting a charter school administrator or board member who has a relative who is a member of the bargaining unit from discussing or voting on the proposed collective bargaining agreement with that unit or from participating in any way in negotiations, including, but not limited to, being a member of the negotiating team; nor should that charter school administrator be present with the school board in closed session when negotiation strategies are being discussed; provided, however, [that] the administrator may serve as a technical resource to the negotiating team and may provide technical information necessary to the collective bargaining process when no one else in the charter school can provide such information; and
6. A provision prohibiting a charter school administrator who has an immediate family member who is a member of the same Statewide union in [another] **a** school district or **another** charter school from participating in any way in negotiations, including, but not limited to, being a member of the negotiating

team or being present with the board in closed sessions when negotiation strategies are being discussed, prior to the board attaining a tentative memorandum of agreement with the bargaining unit that includes a salary guide and total compensation package; once the tentative memorandum of agreement is established, a charter school administrator with an immediate family member who is a member of the same Statewide union in [another] **a** school district or **another** charter school may fully participate in the process, absent other conflicts.

Notwithstanding the above in this paragraph, a [district] **charter school** administrator who has an immediate family member who is a member of the same Statewide union in another [district] **charter school** may service as a technical resource to the negotiating team and may provide technical information necessary to the collective bargaining process when no one else in the [district] **charter school** can provide such information.

- (b) A charter school may exclude per diem substitutes and student employment from its board nepotism policy.

6A:23A-22.11 Contributions to board members and contract awards

- (a) As a condition of receiving charter school aid, charter schools shall have policies that comply with the provisions of this section to ensure that the charter school shall maintain honest and ethical relations with vendors and shall guard against favoritism, improvidence, extravagance, and corruption in its contracting processes and practices. [Such policies shall be adopted by the charter school and implemented by January 20, 2010.] The terms "business entity" and "interest" as used below are defined as set forth in P.L. 2004, c. 19.

1. No board will vote upon or award any contract in the amount of \$17,500 or greater to any business entity [which] **that** has made a contribution reportable by the recipient under P.L. 1973, c. 83 (N.J.S.A. 19:44A-1 et seq.) to a member of the charter school board of trustees during the preceding one-year period.
2. Contributions reportable by the recipient under P.L. 1973, c. 83 (N.J.S.A. 19:44A-1 et seq.) to any member of the **charter** school board **of trustees** from any business entity doing business with the charter school are prohibited during the term of a contract.
3. When a business entity referred to in (a)2 above is a natural person, a contribution by that person's spouse or child [that] **who** resides therewith shall be deemed to be a contribution by the business entity. Where a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity.
4. The disclosure requirement set forth in section 2 of P.L. 2005, c. 271 (N.J.S.A. 19:44A-20.26) also shall apply when the contract is required by law to be publicly advertised for bids.
5. This subsection shall not apply to a contract when a charter school emergency requires the immediate delivery of goods or services.
- [6. With the exception of charter schools previously subject to the requirements of N.J.A.C. 6A:10-2.1(e), this subsection shall not apply to contributions made prior to December 21, 2009.]

6A:23A-22.12 Internal controls

- (a) As a condition of receiving charter school aid, each charter school shall establish specific policies and procedures on internal controls to provide management with reasonable

assurance that the charter school's goals and objectives will be met and that meet the requirements of N.J.A.C. 6A:23A-22.6 through 22.15. Internal controls shall promote operational efficiency and effectiveness, provide reliable financial information, safeguard assets and records, encourage adherence to prescribed policies, and comply with law and regulation.

- (b) The specific internal controls contained in this subchapter shall be established together with other internal controls contained in N.J.A.C. 6A and other law and regulations, required by professional standards, including auditing standards generally accepted in the United States under Generally Accepted Accounting Principles (GAAP), standards contained in Government Auditing Standards (GAS) issued by the Comptroller General of the United States, and as deemed necessary and appropriate by charter school management. Any charter school may submit a written request to the Commissioner to approve an alternate system, approach, or process for implementing the internal controls required in this subchapter. The application must include documented evidence that includes, but is not limited to, an independent, third-party written assessment that the alternative system, approach, or process will achieve the same safeguards, efficiency, and other purposes as the specified internal control requirement(s).

6A:23A-22.13 Segregation of duties; organization structure

- (a) All charter schools shall evaluate business processes annually and allocate available resources appropriately in an effort to establish a strong control environment.
- (b) The school business administrator shall identify processes that, when performed by the same individuals, are a violation of sound segregation of duties. The school business administrator shall segregate the duties of all such processes among business office staff based on available charter school resources, assessed vulnerability, and the associated

cost-benefit.

6A:23A-22.14 Standard operating procedures (SOPs) for business functions

- (a) [By July 1, 2010, each] **Each** charter school shall establish SOPs for each task or function of the business operations of the charter school.
- (b) An SOP manual shall include sections on each routine task or function of the following areas:
 - 1. Accounting, including general ledger, accounts payable, accounts receivable, payroll, [and] fixed assets, and year-end procedures for each;
 - 2. Cash management;
 - 3. Budget development and administration, including tasks such as authorization of transfers and overtime;
 - 4. Position control;
 - 5. Purchasing, including such tasks as preparation of requisitions, approval of purchase orders and encumbering of funds, bid and quote requirements; and verification of receipt of goods and services;
 - 6. Facilities, including administration of work and health and safety;
 - 7. Security;
 - 8. Emergency preparedness;
 - 9. Risk management;
 - 10. Transportation;
 - 11. Food service;
 - 12. Technology systems; and
 - 13. Information management.

- (c) An SOP shall be established that ensures office supplies are ordered in appropriate quantities, maintained in appropriate storage facilities, and monitored to keep track of inventory.

6A:23A-22.15 Approval of amounts paid in excess of approved purchase orders; board policy

- (a) A charter school board shall adopt a policy establishing the approval process for any remittance of payment for invoice amounts greater than the approved purchase order. The policy shall require the school business administrator to identify[,] and investigate, if necessary, the reason for any increase to a purchase order. If it is found that such an increase is warranted, the school business administrator shall either approve a revision to the original purchase order with the reason noted, approve the issuance of a supplemental purchase order for the difference, or cancel the original purchase order and issue a new purchase order. If it is found that such an increase is not warranted, the purchase order shall be canceled and the goods returned. In no instance shall an adjustment be made to a purchase order that changes the purpose or vendor of the original purchase order or a bid award.
- (b) Financial systems shall be programmed to:
 - 1. Limit system access so [that] only appropriate business office staff may make purchase order adjustments;
 - 2. Reject adjustments in excess of any established approval thresholds;
 - 3. Prevent unauthorized changes to be processed;
 - 4. Reject payments where the sum of the invoice amount plus any previous invoices charged to the purchase order exceeds the sum of the original purchase order amount plus any authorized adjustments;

5. Reject duplicate purchase order numbers;
 6. Reject duplicate invoice numbers; and
 7. Prepare an edit/change report listing all payments made in excess of the originally approved purchase order amount.
- (c) The school business administrator shall review on a monthly basis edit/change reports listing all payments made in excess of the originally approved purchase order amount to ensure [that] all payments made are properly authorized.

s:\administrative code 2012-2016\chapter 23a, fiscal accountability\2016 readoption\draft files\second discussion n.j.a.c. 6a_23a-16 to 22 fiscal accountability, efficiency & budgeting procedures.doc